Unofficial Procurement Code and Rules

The Procurement Code was modernized by the State Purchasing and Contracts Office (SPCO) under HB 17-1051 and became effective on August 9, 2017. The Procurement Rules will be effective on October 1, 2018.

The Procurement Rules have been inserted into tables below the Procurement Code cites that they support. Additionally, the Procurement Rules also begin with an R- before the citation. The intent is to assist users of this document understand when you are reading a code citation or a rule.

The following combined procurement code and rules are the unofficial versions of both the Procurement Code and Rules.

The official Procurement Code can be found on LexisNexis here.

The official Procurement Rules can be found on the Colorado Secretary of State’s site here.
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TITLE 24. GOVERNMENT – STATE PROCUREMENT CODE

ARTICLE 101. PROCUREMENT CODE - GENERAL PROVISIONS

PART 1. PURPOSES, CONSTRUCTION, AND APPLICATION

The short title of articles 101 to 112 of this title 24 is the "Procurement Code", referred to in said articles as the "code".

R-24-101-101 General

(1) This code shall be construed and applied to promote its underlying purposes and policies.
(2) The underlying purposes and policies of this code are:
   (a) To simplify, clarify, and modernize the law governing procurement by the state of Colorado;
   (b) To provide for increased public confidence in the procedures followed in public procurement;
   (c) To ensure the fair and equitable treatment of all persons who deal with the procurement system of the state of Colorado;
   (d) To provide increased economy in state procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the state of Colorado;
   (e) To foster effective broad-based competition within the free enterprise system; and
   (f) To provide safeguards for the maintenance of a procurement system of quality and integrity.

24-101-103. Supplementary general principles of law applicable. (Repealed)

24-101-104. Requirement of good faith.
This code requires all parties involved in the procurement of any good or service or in the negotiation, performance, or administration of any contract for those goods or services to act in good faith.

24-101-105. Application of this code.
(1) This code shall apply to all publicly funded contracts entered into by all governmental bodies of the executive branch of this state; except that this code shall not apply to:
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(I) Bridge and highway construction or to contracts for unsolicited or comparable proposals for public-private initiatives under section 43-1-1203;

(II) Contracts between the state and its political subdivisions or other governments, except as provided in article 110 of this title 24;

(II.5) Grants;

(III) Public printing, as defined in section 24-70-201, except for the provisions of article 109 of this title 24;

(IV) Professional services, as defined in section 24-30-1402;

(V) The Colorado state fair authority created pursuant to section 35-65-401 (1);

(VI) The state board of land commissioners in connection with contract expenditures from the state board of land commissioners investment and development fund created in section 36-1-153 (1), or the commercial real property operating fund created in section 36-1-153.7;

(VII) Repealed.

(VIII) Utilities, including water, electricity, and natural gas;

(IX) Works of art for display, purchase or performance;

(X) Copyrighted materials such as books, periodicals, collections, and subscriptions;

(XI) Conference facilities at hotels or other venues that include, but need not to be limited to, meeting rooms, audio visual equipment, catering, and guest accommodation rooms;

(XII) Client-based services including medical services or services where the client has the right to choose the vendor;

(XIII) Dues and memberships;

(XIV) Annuities; and

(XV) Real property or interest in real property.

(a.5) If the procurement official or his or her designee determines that reasonable competition exists in the procurement of a good or service that is exempt from the code pursuant to subsection (1)(a) of this section, the procurement official or his or her designee may require a competitive process.

(b) The governing board of each institution of higher education, including the Auraria higher education center established in article 70 of title 23, by formal action of the board, and the Colorado commission on higher education, by formal action of the commission, may elect to be exempt from the provisions of this code and may enter into contracts independent of the terms specified in this code.

(c) Repealed.

(d) (Deleted by amendment, L. 2017.)

(e) Upon the request to purchase items for resale to the public, the procurement official may, by written determination, provide that this code shall not apply to items acquired for such resale.

(f) Nothing in this code or in rules promulgated under this code shall prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.
(g) Upon the request to enter into a revenue-producing contract, the procurement official may, by written determination, provide that this code shall not apply to the revenue-producing contract. Governmental bodies shall maximize the return to the state when they are parties to revenue-producing contracts.

(2) All political subdivisions and local public agencies of this state are authorized to adopt all or any part of this code and its accompanying rules.

R-24-101-105 Applicability
These rules shall apply to all publicly funded contracts entered into by all governmental bodies of the executive branch of this state; except as otherwise specified in the code. The procurements are further clarified as follows:

(a) For purposes of subparagraph (1)(a)(VIII) of section 24-101-105, C.R.S., “utilities” does not include telecommunications.

(b) For purposes of subparagraph (1)(a)(X) of section 24-101-105, C.R.S., “subscriptions” does not include software.

(c) For purposes of subparagraph (1)(a)(XII) of section 24-101-105, C.R.S., “client-based services” includes supplies when supplies are provided in connection with the services being provided by the governmental body to the client.

(d) For purposes of subparagraph (1)(a)(XIII) of section 24-101-105, C.R.S., dues and memberships mean charges paid to an organization at regular intervals to belong or become a member of the organization. Any additional services offered by the organization are not included in this definition.

24-101-106. Procurement training.
The chief procurement officer, or his or her designee, may develop and conduct a procurement education and training program for employees of governmental bodies and for vendors.

Any person who is employed by a governmental body who purchases goods or services or is involved in the purchasing process for the state, any end users of such goods and services, any vendor or contractor that does business with the state, and any other interested third parties to the procurement process shall enhance the proficiency and stature of the purchasing process by adhering to the highest standards of ethical behavior.
R-24-101-107-01 Ethics
All individuals who are involved in any aspect of the procurement process within the state of Colorado, regardless of whether they are employed by the state, shall not:

(a) Engage in or give the appearance of unethical or compromising practice in relationships, actions, and communications related to the procurement process.

(b) Solicit or accept money, loans, credits, or prejudicial discounts, and avoid the acceptance of gifts, entertainment, favors, or services from another party which might influence, or appear to influence a procurement decision.

(c) Offer money, loans, credits, prejudicial discounts, gifts, entertainment, favors, or services with the intent to influence, or in such a manner that might influence, a procurement decision.

(d) Make material misrepresentations in any communications related to a procurement process, including, but not limited to, information presented in proposals and bids.

Violation of this rule by an individual acting on behalf of the state may result in removal of the individual from the procurement process and imposition of any applicable remedies. Violation of this rule by a vendor or contractor may result in that vendor’s or contractor’s disqualification from award of any contract that was impacted by the violation, the imposition of contractual remedies under any contract, and/or remedies available in article 109 of the code.

R-24-101-107-02 Conflicts of Interest
All individuals who are involved in any aspect of the procurement process within the state of Colorado, regardless of whether they are employed by the state, shall avoid any actual or apparent, individual or organizational conflict of interest in accordance with department policies and all associated technical guidance.

PART 2. DETERMINATIONS

Written determinations required by this code shall be retained in the appropriate official procurement file of the department of personnel or the purchasing agency administering the procurement.

R-24-101-201-01 Preparation and Execution
Where the code or these rules require a written determination, the procurement official or his or her designee required to prepare the determination may delegate its preparation. The determination is subject to the approval of the procurement official or his or her designee.

R-24-101-201-02 Content
Each written determination shall set out sufficient facts, circumstances, and reasoning to substantiate the specific determination which is made.
PART 3. DEFINITIONS

24-101-301. Definitions.

The terms defined in this section shall have the following meanings whenever they appear in this code, unless the context in which they are used clearly requires a different meaning or a different definition is prescribed for a particular article or portion thereof:

(1) "Acceptance" means the action of consenting to receive or undertake something offered.
(2) "Award" means the selection of a bid or proposal by a governmental body. An award does not mean that a contract has been executed or that a commitment voucher has been issued pursuant to section 24-30-202.
(3) "Bidder" means any person that submits a bid in response to an invitation for bids.
(4) "Business" means any corporation, limited liability company, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.
(5) "Business day" means any day other than Saturday, Sunday, or a legal holiday.
(6) "Chief procurement officer" means the individual to whom the executive director has delegated his or her authority pursuant to section 24-102-202 to procure or supervise the procurement of all supplies and services needed by the state.
(7) "Construction" means the process of building, altering, repairing, improving, or demolishing any public structure or building or any other public improvements of any kind to any public real property. For the purposes of this code, "construction" includes capital construction and controlled maintenance, as defined in section 24-30-1301.
(8) "Contingency-based contract" shall have the same meaning as set forth in section 24-17-203 (1).
(9) "Contract" means any type of state agreement, regardless of what it may be called, between a governmental body and a contractor, where the principal purpose is to acquire supplies, services, or construction or to dispose of supplies for the direct benefit of a governmental body. "Contract" includes commitment vouchers as described in section 24-30-202.
(10) "Contract modification" means any written alteration of a contract accomplished in accordance with the terms of that contract.
(11) "Contractor" means any person having a contract with a governmental body. For the purposes of this code, a vendor is considered a contractor.
(12) "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit or by a public procurement unit with an external procurement unit.
(13) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this code and a fee, if any.
(14) "Department" means the department of personnel.
"Established catalog price" means the price included in a catalog, price list, schedule, or other form that:
(a) Is regularly maintained by a manufacturer or contractor;
(b) Is either published or otherwise available for inspection by customers; and
(c) States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

"Executive director" means the executive director of the department of personnel.

"External procurement unit" means any buying organization not located in this state which, if located in this state, would qualify as a public procurement unit. An external procurement unit includes any purchasing cooperative that satisfies the purposes of this code as set forth in section 24-101-102. An agency of the United States is an external procurement unit.

"Governmental body" means any department, commission, council, board, bureau, committee, institution of higher education, agency, government corporation, or other establishment or official, other than an elected official, of the executive branch of state government in this state; except that the governing board of each institution of higher education, including the Auraria higher education center established in article 70 of title 23, by formal action of the board, and the Colorado commission on higher education, by formal action of the commission, may elect to be excluded from the meaning of "governmental body".

"Grant" means an agreement in which a governmental body as grantor transfers anything of value to a grantee to carry out a public purpose of support or stimulation authorized by law instead of acquiring property or services for the direct benefit or use of that governmental body. A grant may include a distribution of funds.

"Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids. Invitation for bids is the commonly used term for soliciting competitive sealed bids and competitive sealed best value bids.

"Legal holiday" shall have the same meaning as defined in section 24-11-101 (1).

"Local public procurement unit" means any county, city, county and city, municipality, or other political subdivision of the state, any public agency of any such political subdivision, any public authority, any educational, health, or other institution, and, to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services, and construction.

"Low responsible bidder" means any person who has bid in compliance with the invitation for bids and within the requirements of the plans and specifications for a public contract who is the low bidder and who has furnished bonds or their equivalent if required by law.

"Low tie bids" means low responsible bids from bidders that are identical in amount and that meet all the requirements and criteria set forth in the invitation for bids pursuant to this code.

"Nonresident bidder" means a bidder that does not satisfy the criteria to be a resident bidder.

"Offeror" means any person that submits a proposal in response to a request for proposals.

"Person" means any business, individual, union, committee, club, other organization, joint venture or group of individuals.

"Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. "Procurement" includes all functions that
pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. "Procurement" also includes the procurement of information technology as defined in section 24-37.5-102 (2).

(29) "Procurement agent" means any person duly authorized to enter into and administer procurements and make written determinations with respect thereto. "Procurement agent" includes an authorized representative acting within the limits of his or her authority.

(30) "Procurement official" means the primary individual of a purchasing agency with purchasing authority created pursuant to section 24-102-204 or 24-102-302 (2) or the individual authorized to enter into contracts for capital construction or controlled maintenance pursuant to section 24-30-1303 (5).

(31) "Professional services" means services of accountants, clergy, physicians, lawyers, and dentists and such other services as may be procured through agents of those services, excluding those professional services as defined in section 24-30-1402, as the executive director may by rule designate as professional services.

(32) "Public employee" means an individual drawing a salary from a governmental body or a noncompensated individual performing personal services for a governmental body.

(33) "Public procurement unit" means either a local public procurement unit or a state public procurement unit.

(34) "Purchase description" means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to, or made a part of, the solicitation.

(35) "Purchasing agency" means any governmental body which is authorized to enter into contracts by section 24-102-302 (1) by way of delegation from the executive director pursuant to section 24-102-302 (2) or by the way of delegation from the executive director.

(36) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals. Request for proposals is the commonly used term for soliciting competitive sealed proposals.

(37) "Resident bidder" means:
   (a) A person that is authorized to transact business in Colorado and that maintains its principal place of business in Colorado; or
   (b) A person that:
      (I) Is authorized to transact business in Colorado;
      (II) Maintains a place of business in Colorado; and
      (III) Has paid Colorado unemployment compensation taxes in at least six of the eight quarters immediately prior to bidding on a construction contract for a public project.

(38) "Responsible" means the capability in all respects to perform fully the contract requirements and the integrity and reliability that will assure good faith performance.

(39) "Responsive" means a bid or proposal that meets the specifications, acceptability requirements, and terms and conditions of the solicitation and that uses the form prescribed by the purchasing agency.

(40) "Rules" means state procurement rules and has the same meaning as provided in section 24-4-102 (15).

(41) "Sealed" means a bid or proposal submitted in a manner that:
(a) Ensures that the contents of the bid, proposal, or best value bid cannot be opened or viewed before the formal bid opening without leaving evidence that the document has been opened or viewed;

(b) Ensures that the document cannot be changed, once received by the state, without leaving evidence that the document has been changed;

(c) Bears a physical or electronic signature, as electronic signature is defined in the "Uniform Electronic Transactions Act", section 24-71.3-102 (8), evincing an intent by the bidder or offeror to be bound; and

(d) Records, manually or electronically, the date and time the bid or proposal is received by the state and that cannot be altered without leaving evidence of the alteration.

(42) "Services" means the furnishing of labor, time, or effort by a contractor not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. The term does not include professional services as defined in section 24-30-1402.

(43) "Solicitation" means all documents and related information, whether attached or incorporated by reference, published on an electronic bidding system in connection with a procurement prior to the response deadline.

(44) "Specification" means any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

(45) "State public procurement unit" means the department of personnel or any other purchasing agency of this state.

(46) "Statement of work" means a document that defines specific activities and deliverables and their respective timelines, all of which form a contractual obligation upon the vendor in providing services to the state.

(47) "Supplies" means all property, including but not limited to equipment, materials, and insurance. The term does not include land, the purchase of an interest in land, water or mineral rights, workers' compensation insurance, benefit insurance for state employees, or property furnished in connection with public printing, as defined in section 24-70-201.

(48) "Using agency" means any governmental body of the state which utilizes any supplies, services, or construction procured under this code.
**R-24-101-301 Defined Terms**

As used throughout these rules, words and terms defined in the code shall have the same meaning as in the code. In addition, for the purposes of these rules, the following terms shall have the meanings set forth below:

(a) “Commodity”, “goods” and “supplies” as used in these rules shall have the same meaning as “product”.

(b) “Electronic procurement systems” means database and notification systems created pursuant to section 24-102-202.5, C.R.S.

(c) “Procurement agent” as used in these rules also may include a procurement official. The procurement official has the authority to perform as the procurement agent.

(d) “Product” means anything that is produced or manufactured and that may be obtained, or needs to be obtained, by the state, either in and of itself, or in conjunction with services.

(e) “Construction project,” for purposes of rule R-24-102-202.5-02, means any procurement that meets the definition of a “public project,” as defined in section 24-92-102(8), C.R.S., or any procurement that meets the definition of “construction” as defined in section 24-101-301, C.R.S.

**PART 4. PROCUREMENT RECORDS AND INFORMATION**

**24-101-401. Public access to procurement information - repeal.**

(1) Except as provided in section 24-103-201.5, proposals and bids shall be opened so as to avoid disclosure of the contents of the proposal or bid to competing offerors during the review process. A register of proposals and bids shall be prepared in accordance with rules and such procurement records shall be open for public inspection after the award as provided in sections 24-72-203 and 24-72-204. The executive director may promulgate rules to clarify the process for classifying confidential or proprietary information in procurement records.

(2)

(a) To the extent not prohibited by federal law, each contract entered into by a governmental body pursuant to this code shall specify that the contract and performance measures and standards under article 103.5 of this title are open to inspection by the public as provided in sections 24-72-203 and 24-72-204.

(b)

(I) Each agreement entered into by a governmental body with a certified employee organization for state employees under executive order D 028 07, or any similar successor executive order with respect to the existence of a certified employee organization for state employees, shall specify that the agreement is open to public inspection as provided in sections 24-72-203 and 24-72-204.

(II) If executive order D 028 07, or any similar successor executive order with respect to the existence of a certified employee organization for state employees, is rescinded or altered by the governor in any way to create a situation where a certified employee organization for state employees no longer represents state employees, the governor shall provide written notice of this fact to the revisor of statutes.
(III) This paragraph (b) is repealed, effective upon the receipt by the revisor of statutes of the written notice under subparagraph (II) of this paragraph (b).

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
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<tbody>
<tr>
<td>R-24-101-401-01 Prior to Award</td>
<td>Following the closing time and date for the submission of solicitation responses and prior to award of a contract, the names of the bidders or offerors shall be made available for inspection, upon request. For solicitations where the award is based on the lowest bid or where price is the primary consideration, the amount of each bid or proposal shall be included with the name of the bidder or offeror. For solicitations where the award is based on factors other than the lowest bid or where price is not the primary consideration, the amount of each bid or proposal shall not be made available prior to award. In no event shall a solicitation response be made available publicly prior to award.</td>
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<tr>
<td>R-24-101-401-02 After Award</td>
<td>After award of a solicitation, all documentation related to the solicitation, including bidder or offeror responses, shall be open to public inspection, except to the extent the state has approved a request from a bidder or offeror to classify certain portions of the response as trade secrets or other confidential or proprietary information.</td>
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<tr>
<td>R-24-101-401-03 Request for Confidentiality</td>
<td>A bidder or offeror may submit, as a part of its solicitation response, a written request for classification of certain portions of the response as trade secrets or other confidential or proprietary information. Material for which confidentiality has been requested shall be readily identifiable and separable from other portions of the solicitation to facilitate public inspection of the non-confidential portion of the solicitation response. In no event shall an entire solicitation response be classified as confidential. The procurement official or his or her designee shall determine if the information identified in the request is exempt from disclosure in accordance with section 24-72-204, C.R.S., and shall inform the bidder or offeror in writing of his or her determination. If the bidder or offeror does not agree with the determination of the procurement official or his or her designee, the bidder or offeror may protest the determination in accordance with article 109 of the code.</td>
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<tr>
<td>R-24-101-401-04 Non-Competitive Procurements</td>
<td>The rules applicable to the disclosure of information prior to and after an award and the process for determining if certain information is exempt from disclosure in accordance with section 24-72-204, C.R.S., also shall apply to non-competitive procurements.</td>
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<tr>
<td>R-24-101-401-05 Confidentiality regarding Cancellation of a Solicitation</td>
<td>The reason and documentation supporting the decision to cancel any solicitation, or rejection of bids or proposals, in whole or in part, before a contract is executed shall remain confidential in accordance with section 24-103-301, C.R.S., for the lesser of six months or until the contract at issue is awarded.</td>
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24-101-402. Retention of procurement records.

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules, as provided in section 24-80-103.
ARTICLE 102. PROCUREMENT ORGANIZATION

PART 1. EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL

24-102-101. Authority and duties of the executive director.
Subject to the provisions of part 2 of this article 102, the executive director of the department of personnel has the authority and responsibility to promulgate rules, consistent with this code, governing the procurement and disposal of any and all supplies, services, and construction to be procured by the state, except for surplus state property as provided in section 17-24-106.6, and except as provided in part 4 of article 82 of this title 24. The executive director shall consider and decide matters of policy within the provisions of this code.

PART 2. DIVISION OF PURCHASING

24-102-201. Purchasing.
(1) (Deleted by amendment, L. 96, p. 1510, § 32, effective June 1, 1996.)
(2) The powers, duties, and functions concerning purchasing shall be administered as if transferred to the department of personnel by a type 2 transfer, as such transfer is defined by the "Administrative Organization Act of 1968", article 1 of this title.

R-24-102-201 Chief Procurement Officer
The chief procurement officer shall be appointed by the executive director and shall have these powers and duties through delegation from the executive director. Any powers and duties not so delegated remain with the executive director. The executive director and the chief procurement officer have the authority to perform the role of procurement official as needed.

(1) Consistent with the provisions of this code, the executive director may adopt operational procedures governing the internal functions of the department.
(2) (a) The executive director may promulgate rules in accordance with the "State Administrative Procedure Act", article 4 of this title 24, in furtherance of the administration of this code.
(b) The executive director may delegate his or her authority to promulgate rules.
(c) No rule promulgated pursuant to this section shall change any commitment, right, or obligation of the state or of a contractor under a contract in existence on the effective date of such rule.
(3) Subject to rules, the executive director may delegate his or her purchasing authority to designees or to any department, agency, or official.
(4) Except as otherwise specifically provided in this code, the chief procurement officer shall, pursuant to rules:
   (a) Procure or supervise the procurement of all supplies and services needed by the state;
   (b) Repealed.
(c) Establish and maintain programs for the inspection, testing, and acceptance of supplies and services;
(d) Retain the right to examine each requisition submitted by a using agency and approve, disapprove, or revise it as to quantity or quality;
(e) Develop and maintain programs and procedures to delegate purchasing authority in order to conserve resources for management of the statewide purchasing system; and
(f) Develop programs to evaluate and reduce the administrative costs of the statewide procurement function.

**R-24-102-202-01 Mandatory and Permissive Price Agreements**

(a) "Price agreement" means a contract negotiated, managed and maintained by the department for commonly sourced supplies and services. These contracts may be used by all governmental bodies, institutions, local governments and nonprofits certified pursuant to section 24-110-207.5, C.R.S.

(b) The chief procurement officer may issue mandatory or permissive price agreements for supplies or services.

(c) Mandatory price agreements shall be used by all governmental bodies if and when the supplies or services are needed. Any governmental body desiring to purchase supplies or services of a similar nature from a source other than a mandatory price agreement must request and receive written authorization to do so from the chief procurement officer or his or her designee.

(d) Permissive price agreements may be used by all governmental bodies if the supplies or services are needed.

(e) If a governmental body does not use mandatory or permissive price agreements to obtain the covered supplies or services, the needs must be submitted for competition as provided by these rules.
R-24-102-202-02 Purchasing Delegations
Recognizing the importance of local control to meet local needs, delegation of purchasing authority is encouraged where efficient. Purchasing delegations will have limits as described in rule R-24-103-201-01, and all associated subsections. A governmental body that receives limited purchasing authority from the executive director or chief procurement officer shall be referred to as a “group I purchasing agency”, and a governmental body that receives a full purchasing delegation shall be referred to as a “group II purchasing agency”. The procurement official may further delegate his or her responsibilities in accordance with the policies of the department.

(a) Minimum criteria to receive a group I purchasing delegation shall include:
   (i) a signed delegation agreement between the executive director or chief procurement officer and the procurement official of the governmental body;
   (ii) successful completion by staff of training as requested by the department; and
   (iii) use of an electronic procurement system.

(b) Minimum criteria to receive a group II purchasing delegation shall include:
   (i) a signed delegation agreement between the executive director or chief procurement officer and the procurement official of the governmental body;
   (ii) demonstrated need;
   (iii) demonstrated existing staff competency in state purchasing; and
   (iv) use of an electronic procurement system.

R-24-102-202-03 Revocation of Purchasing Delegation
If abuses to these rules by a governmental body are discovered, the chief procurement officer may revoke the purchasing authority in its entirety or modify the delegation to prevent future violations.

24-102-202.5. Supplier database - fees - cash fund - program account.

(1) The executive director shall develop a centralized database that includes a listing of all businesses which are interested in providing goods and services to the state. The businesses in the database shall be identified by a registration number, and the executive director shall develop a procedure for notifying the appropriate businesses whenever the state issues solicitations for goods or services which a particular business provides. The database shall be accessible through the department of personnel to all purchasing agencies designated pursuant to section 24-102-302 (2).

(2) The executive director may require each business that wishes to be included in the database created pursuant to subsection (1) of this section to pay a registration fee as determined by the executive director. The executive director may set and collect such fees as are necessary to cover the direct and indirect costs that are incurred in implementing the provisions of this section. The revenue from such fees shall be transmitted to the state treasurer, who shall credit the same to the supplier database cash fund, which fund is hereby created. The general assembly shall make appropriations from such fund as necessary to implement the provisions of this section. All moneys not expended or encumbered and all interest earned on the investment or deposit of the moneys in the fund shall remain in the
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fund and shall not revert to the general fund or any other fund at the end of any fiscal year.

(b) (Deleted by amendment, L. 2009, (SB 09-099), ch. 420, p. 2336, § 1, effective June 4, 2009.)

(2.5)

(a) The executive director shall develop and implement a statewide centralized electronic procurement system to allow the utilization of technology to create a more efficient delivery of state procurement services. The executive director may set and collect fees from vendors with cooperative purchasing agreements and from local public procurement units that are participating in the electronic procurement system, as necessary to cover the direct and indirect costs of implementing and maintaining the electronic procurement system. In addition, the executive director may collect moneys from cooperative purchasing organizations for procurement support.

(b) (Deleted by amendment, L. 2017)

(c) The revenue from the fees and any moneys collected from cooperative purchasing organizations pursuant to subsection (2.5)(a) of this section shall be transmitted to the state treasurer, who shall credit the same to the supplier database cash fund created in subsection (2)(a) of this section.

(3) The provisions of this section shall not apply to contractors required to be approved pursuant to the provisions of section 24-30-1303 (1) (q).

R-24-102-202.5-01 Use of Electronic Procurement Systems - Goods and Services
An electronic procurement system shall be the notification method for competitive solicitations for goods and services.

R-24-102-202.5-02 Use of Electronic Procurement Systems - Notice of Construction Projects and Professional Services
For all construction projects and for all procurements for professional services (as defined in section 24-30-1402(6), C.R.S.) for which competitive notification or solicitation procedures are required, a notification of the solicitation must be placed on an electronic procurement system, and the award must be posted on the same electronic procurement system.

24-102-203. Special duties regarding state-owned motor vehicles. (Repealed)

24-102-204. Delegation of purchasing authority by the executive director of the department of personnel. (Repealed)

24-102-205. Centralized contract management system - personal services contracts - legislative declaration – definitions. (Repealed)


(1)

(a) Prior to contracting or as a requirement for the solicitation of any contract from the state for services, as appropriate, any prospective vendor shall disclose in a written statement of work whether it anticipates subcontracting any services under the contract, where such subcontracted services will be performed under the contract, including any subcontracts, and whether any
subcontracted services under the contract or any subcontracts are anticipated to be performed outside the United States or the state. If the prospective vendor anticipates services under the contract or any subcontracts will be performed outside the United States or the state, the vendor shall provide in its written statement of work a provision setting forth why it is necessary or advantageous to go outside the United States or the state to perform the contract or any subcontracts.

(b) Each contract entered into or renewed by a governmental body pursuant to this code must contain a clause that requires the vendor to provide written notice to the governmental body if the vendor decides, after the contract is awarded, to perform services under the contract outside the United States or the state or to subcontract services under the contract to a subcontractor that will perform such services outside the United States or the state. The contract must specify that the vendor is required to provide such written notice no later than twenty days from the time the vendor decides to perform services under the contract outside the United States or the state or subcontracts services under the contract to a subcontractor that will perform such services in a location outside the United States or the state.

(2) The written notification required by paragraphs (a) and (b) of subsection (1) of this section must include, but need not be limited to, a statement of the type of services that will be performed at a location outside the United States or the state and the reason why it is necessary or advantageous to go outside the United States or the state to perform such services.

(3) A governmental body shall provide written notice to the department of personnel if it awards a contract to a vendor that has provided written notice pursuant to paragraph (a) or (b) of subsection (1) of this section that the vendor or the vendor’s subcontractor will perform services under the contract outside the United States or the state.

(4) If a vendor knowingly fails to notify the governmental body of any outsourced services as specified in this section, the governmental body may, in the governmental body’s discretion, terminate the contract.

(5) The executive director shall post any notice that a vendor provides to a governmental body pursuant to this section on the official web site of the department.

(6) Nothing in this section shall be construed to apply to any contract to which the state is a party under medicare, the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5, C.R.S., the "Children’s Basic Health Plan Act", article 8 of title 25.5, C.R.S., or the "Colorado Indigent Care Program", part 1 of article 3 of title 25.5, C.R.S.

(7) Nothing in this section applies to any project that receives federal moneys. In addition, nothing in this section contravenes any existing treaty, law, agreement, or regulation of the United States. Contracts entered into in accordance with any treaty, law, agreement, or regulation of the United States do not violate this section to the extent of that accordance. The requirements of this section are suspended if such requirements would contravene any treaty, law, agreement, or regulation of the United States, or would cause denial of federal moneys or preclude the ability to access federal moneys that would otherwise be available.
### R-24-102-206-01 Department – Services Contracts
The department will collect the data required by section 24-102-206, C.R.S. for all services contracts, including contracts for construction services.

### R-24-102-206-02 Written Notice and Post of Notice Timeline
Pursuant to section 24-102-206(3), C.R.S., a governmental body shall provide written notice to the department within 30 calendar days of the receipt by the governmental body of a vendor’s notice that the vendor or the vendor’s subcontractor will perform services outside of the United States or the state. Pursuant to section 24-102-206(5), C.R.S., the department will post on the department’s official web site, for a period of six months, any written notice that a vendor provides to a governmental body within 30 calendar days of the department’s receipt of such notice.

### 24-102-206.5. Contract performance outside the United States or Colorado - annual report.

1. On January 1, 2014, and on each January 1 thereafter, a governmental body shall submit an annual report to the general assembly if the governmental body entered into one or more contracts with a vendor during the previous state fiscal year and received written notice from one or more vendors pursuant to section 24-102-206 (1) (b) that the vendor or the vendor’s subcontractor would perform services under the contract outside the United States or the state.

2. 
   
   a. The purpose of the report required in subsection (1) of this section is to notify taxpayers and the general assembly regarding the use of United States and state tax dollars on state contracts in which services under the contract are performed outside the United States or the state. The governmental body shall provide information required in the report based on the information that vendors submitted to the governmental body pursuant to section 24-102-206 during the previous state fiscal year.

   b. The report must separate data by state contract type and provide information regarding the type and the percentage of the total services that were performed outside the United States or the state by each vendor or a vendor's subcontractor under each state contract.

   c. The report required by subsection (1) of this section must also include a description of any initiatives that the governmental body has taken to actively reduce the number of contracts in which a vendor or vendor's subcontractor perform services under the contract outside the United States or the state.

   d. A governmental body that is required to submit a report pursuant to subsection (1) of this section may include the report in its annual report to the general assembly required by the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act".

### 24-102-207. Statewide procurement card agreement - definition.

1. The department shall establish a statewide procurement card program. All governmental bodies that utilize a procurement card shall participate in the statewide program. For purposes of this section, "governmental body" has the same meaning as set forth in section 24-101-301 (18); except that, for purposes of this section, "governmental body" also includes elected officials.
(2) Governmental bodies that are not subject to the "Procurement Code", articles 101 to 112 of this title 24, or the fiscal rules are subject to this section; except that, on and after December 1, 2010, this section does not apply to an institution of higher education that has elected to be excluded from the meaning of "governmental body" pursuant to section 24-101-301 (18).

(3) The statewide procurement card shall be considered an alternate method of payment and shall not be considered a commitment voucher required by section 24-30-202 (1). Any revenues resulting from the procurement card program shall be deposited as cash revenue in the general fund and shall be subject to annual appropriation by the general assembly. Unless otherwise directed by the general assembly, the state controller shall make adjustments equivalent to such revenues in the form of a reduction of administrative costs allocated to governmental bodies on a basis proportional to each governmental body’s contribution to statewide procurement card expenditures, as determined by the state controller, to ensure that the federal government receives its share of procurement card revenues as required by federal regulations and to ensure that the indirect obligations are funded. Institutions of higher education that elect to be excluded from the meaning of "governmental body" pursuant to section 24-101-301 (18) shall transfer money to the department of higher education or the Colorado commission on higher education to the extent required to pay indirect cost assessments, as defined in section 24-75-112 (1) (f). For purposes of this subsection (3) the term "allocated" does not mean an appropriation or cash transfer to any governmental body, but refers to an internal process within the office of the state controller.

PART 3. ORGANIZATION OF PUBLIC PROCUREMENT

24-102-301. Centralization of procurement authority.

Except as otherwise provided in this part 3, all rights, powers, duties, and authority relating to the procurement of supplies, services, and construction and the sale and disposal of supplies, services, and construction are vested in the department of personnel except for the disposal of surplus state property as provided in section 17-24-106.6, C.R.S., and except as provided in part 4 of article 82 of this title.


(1) Capital construction and controlled maintenance, as defined and delegated to a procurement official by part 13 of article 30 of this title 24, shall be procured by such procurement official as the appropriate purchasing agency.

(2) If the executive director or his or her designee is of the opinion and so certifies in writing that the needs of any governmental body are of such specialized nature and sufficient volume to warrant a purchasing agency for such governmental body, he or she shall authorize the creation of the same. All such purchasing agencies shall operate under the provisions of this code and the rules promulgated pursuant thereto and shall be subject to the supervision and control of the executive director. All such purchasing agencies shall operate under the provisions of section 17-24-111 requiring the purchase of goods and services from the division of correctional industries, and failure of any such purchasing agency to comply with such requirement shall be cause for the executive director to suspend for a period of up to one year at the discretion of the executive director the authority of a purchasing agency created pursuant to this subsection (2) to purchase goods and services. The authority of a purchasing agency to purchase goods and services may also be suspended at the discretion of the executive director. The financial and staff
resources dedicated to the purchasing function in the affected agency shall be under the authority of the department of personnel during the period of suspension, and purchases made for the affected agency shall be in accordance with the requirements of section 17-24-111 (1).

(3) The procurement officials responsible for procuring the supplies, services, or construction delegated to them by subsections (1) and (2) of this section shall conduct procurements in accordance with the provisions of this code and its implementing rules. The executive director may establish a standard supplier's form and a standard set of procedures that each purchasing agency shall use in accepting the form and evaluating the supplier.

PART 4. STATE PROCUREMENT RULES

24-102-401. State procurement rules. (Repealed)

PART 5. COORDINATION


All using agencies shall furnish such reports as the chief procurement officer may require concerning usage, needs, and stocks on hand, and the executive director shall have authority to prescribe forms to be used by the using agencies in the requisitioning, ordering, and reporting of supplies, services, and construction.

24-102-502. Procurement advisory council - sunset review. (Repealed)
ARTICLE 103. SOURCE SELECTION AND CONTRACT FORMATION

PART 1. DEFINITIONS

24-103-101. Definitions. (Repealed)

PART 2. METHODS OF SOURCE SELECTION

24-103-201. Methods of source selection.

(1) Unless otherwise authorized by law, all state contracts shall be awarded as provided in:
   (a) Section 24-103-202, concerning awards solicited by an invitation for bids;
   (b) Section 24-103-203, concerning awards solicited by a request for proposals;
   (c) Section 24-103-202.3, concerning awards solicited by an invitation for best value bids;
   (d) Section 24-103-204, concerning small purchases;
   (e) Section 24-103-205, concerning sole source procurements;
   (f) Section 24-103-206, concerning emergency procurements;
   (g) Part 14 of article 30 of this title 24, concerning architect, engineer, landscape architect, and land surveying services;
   (h) Section 24-103-208, concerning other procurement methods; or
   (i) Part 2 of article 38 of this title 24, concerning public-private initiatives.

R-24-103-201 General Rules of Source Selection

The following general rules apply to all methods of source selection, unless otherwise specified. For methods of source selection for construction, see rules implementing article 105 of the code.
R-24-103-201-01 Purchasing Thresholds

(a) Purchases of goods or services may be made without benefit of competition as follows:
   (i) A governmental body without delegated purchasing authority may purchase goods or services up to a limit of $5,000;
   (ii) A governmental body with delegated purchasing authority may purchase goods or services up to $25,000; and

(b) Small purchases are goods and services purchases costing less than $150,000. Goods and services between $25,000 and $150,000 may be purchased using a documented quote process, described in rule R-24-103-204-01, or the methods identified in section 24-103-201, C.R.S. The chief procurement officer may approve or deny a request from a procurement official or his or her designee to allow the purchasing agency to use a documented quote process when the estimated cost would exceed the small purchase threshold.

(c) Invitation for bids, described in rule R-24-103-202-01, request for proposals, described in rule R-24-103-203, and invitations to negotiate, described in rule R-24-103-208-03, may be used for goods or services estimated to exceed the small purchase threshold of $150,000.

(d) Reverse auctions, described in rule R-24-103-208-01; special circumstance procurements, described in rule R-24-103-208-04; emergency procurements, described in rule R-24-103-206 and rule R-24-105-101.6; and sole source procurements, described in rule R-24-103-205 and rule R-24-105-101.5, may be used at any dollar threshold.

R-24-103-201-02 Fair and Reasonable Price

(a) Small purchases are subject to the requirement that prices paid be fair and reasonable in accordance with section 24-30-202(2), C.R.S.

(b) The individual conducting the acquisition on behalf of the state, to include the procurement official or his or her designee as required by these rules, shall use professional judgment to ensure that the state is receiving maximum value. This rule does not preclude the option to place the solicitation on an electronic procurement system.

(c) Procurement of services greater than $25,000 must be reviewed by the procurement official or his or her designee to determine if prices or rates are fair and reasonable.

(d) If only one bid or proposal is received in response to a solicitation, an award may be made to the single bidder or offeror if the procurement official finds that the price submitted is fair and reasonable and that other prospective bidders or offerors had reasonable opportunity to respond. If the price submitted is not fair and reasonable and there is not adequate time for re-solicitation, the procurement official may enter into competitive negotiation in accordance with rule R-24-103-208-02. If responsiveness is a requirement for award, the bid or proposal of the sole prospective bidder or offeror must be responsive before being considered for award. Otherwise, the bid must be rejected.
### R-24-103-201-03 Terminology

(a) An “acceptable bid or proposal” means a bid or proposal submitted by any person in response to a solicitation, issued by the state, which is in compliance with the solicitation terms and conditions, and within the requirements of the plans and specifications described and required therein.

(b) “Advantageous” means a judgmental assessment by a governmental body of what is in the best interests of the governmental body.

(c) A “bid or proposal” means a vendor’s response, to a solicitation, also called a response or offer.

(d) A “substitute bid” means an offer submitted by any person in response to a solicitation that is not in substantial compliance with the terms and conditions and specifications of the solicitation as issued. A substitute bid is non-responsive to the requirements of the solicitation. If a substitute bid demonstrates that a different specification could be used to provide the desired or similar product or service, the procurement agent will be responsible for determining whether the alternative specification creates a justification for canceling the solicitation and re-soliciting.

### R-24-103-201-04 Content of Solicitations

(a) At a minimum, a solicitation shall include the following:

(i) instructions and information to vendors concerning the bid submission requirements, including the time and closing date for submission of bids or proposals, the address of the office to which bids or proposals are to be delivered, and any other special information; and

(ii) specifications or requirements which are not unduly restrictive. Brand name specifications, brand name or equal specifications, or qualified products lists shall only be used in accordance with the provisions of rules implementing article 104 of the code.

(b) The solicitation may incorporate documents by reference provided that the solicitation specifies where such documents can be obtained.

(c) Solicitations shall be conducted only by a procurement official or his or her designee.
R-24-103-201-05 Solicitation Publication Time
Except as provided under emergency procedures, described in rule R-24-103-206 and the rules implementing article 105 of the code, solicitations shall be published on an electronic procurement system as follows:
(a) Documented quotes, as described in rule R-24-103-204-01, shall be published for at least three consecutive business days.
(b) Invitations for bids, described in rule R-24-103-202-02, shall be published for at least 10 consecutive business days.
(c) Requests for proposals, described in rule R-24-103-203, and invitations to negotiate, described in rule R-24-103-208-03, shall be published for at least 30 consecutive calendar days.
(d) The intent to conduct a competitive reverse auction, described in rule R-24-103-208-01, shall be published for at least 10 consecutive business days.
(e) When special requirements or conditions exist, the procurement official may lengthen or shorten the posting time, but in no case shall the time period be shortened to reduce competition. If a solicitation, other than a documented quote, is posted on an electronic procurement system for less than the publication time required in this rule, the procurement official shall document the reason a reduced publication period was required in the procurement record.

R-24-103-201-06 Questions and Clarifications
(a) In cases where a solicitation may require interpretation, or raises questions or concerns from potential bidders or offerors, all known potential bidders or offerors must be given an opportunity to ask questions and receive answers or clarifications.
(b) This may be accomplished by the use of a pre-bid or pre-proposal conference, a formal inquiry period, or a combination of methods. The solicitation shall state the anticipated method(s) to be used, and shall list corresponding dates, times and locations for any such opportunities.
(c) Pre-bid or pre-proposal conferences may be conducted to explain the procurement requirements. Nothing stated at the pre-bid or pre-proposal conference shall change the solicitation unless a change is made by written amendment, posted on an electronic procurement system. Pre-bid or pre-proposal conference attendance may be mandatory or optional, but must be stated as such in the solicitation.
(d) If responses to inquiries, regardless of the method of receiving and answering them, result in any material changes to the scope of work or otherwise affect the manner or form of response, the procurement official or his or her designee must notify all known potential bidders or offerors of any such change through modification of the solicitation.
R-24-103-201-07 Amendments  
(a) Amendments to solicitations shall be identified as such and may require that the bidder or offeror acknowledge receipt of all amendments issued when submitted its bid or proposal.  
(b) Amendments shall reference the portions of the solicitation it amends.  
(c) Amendments shall be posted on an electronic procurement system with sufficient time to allow prospective bidders or offerors to consider them in preparing their bids or proposals. If the time set for bid or proposal opening will not permit such preparation, such time shall be increased in the amendment.

R-24-103-201-08 Mistakes in Bids or Proposals  
(a) When it appears from a review of the bid or proposal that a mistake has been made, the procurement agent should request that the bidder or offeror confirm the bid or proposal.  
(b) Minor informalities are matters of form rather than substance, which are evident from the bid or proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders or offerors; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The procurement official or his or her designee may waive such informalities or allow the bidder or offeror to correct them depending on which option is in the best interest of the state.  
(c) If the mistakes are clearly evident on the face of the bid or proposal document, the bid or proposal may not be withdrawn solely for this reason. Instead, the bidder or offeror may correct the mistakes to reflect the intended bid or proposal. Examples of mistakes that may be clearly evident on the face of the bid or proposal document are typographical errors, errors in extending unit prices, mathematical errors and transposition errors.  
(d) If the mistakes are attributable to an error in judgment, the bid or proposal may not be corrected.  
(e) Any decision to permit or deny correction of a bid or proposal under this section shall be supported by a written determination prepared by the procurement official or his or her designee.
R-24-103-201-09 Withdrawal of Bids or Proposals
(a) Any bid or proposal may be modified or withdrawn by written notice to the appropriate purchasing agency prior to the specified bid opening date and time.
(b) The procurement official may allow a bid or proposal to be withdrawn from the appropriate purchasing agency after bid or proposal opening but prior to award provided:
   (i) the bidder or offeror provides written notice including evidentiary proof that clearly and convincingly demonstrates that a mistake was made in the costs or other material matter provided or the mistake is clearly evident on the face of the bid or proposal; and
   (ii) the procurement official determines that it is reasonable to allow the bid or proposal to be withdrawn.
(c) A bid or proposal may not be withdrawn from the purchasing agency after award.
(d) If a bid is withdrawn in accordance with this rule, any bid surety shall be returned to the bidder or offeror in a timely manner.

R-24-103-201-10 Timeliness of Bids or Proposals
Bids or proposals received after the bid or proposal submission time shall not be opened and shall be rejected as a late response. The following exceptions may be permitted by the procurement official:
(a) If a bid or proposal is not delivered by the specified submission date and time, the bid or proposal may be accepted if it can be reasonably determined by the procurement official that:
   (i) the postal service, a courier or delivery service outside of the control of the vendor was in possession of the bid or proposal at the specified submission date and time; and
   (ii) the bid or proposal was originally scheduled for delivery by a courier or delivery service outside the control of the vendor to the purchasing agency by the specified submission date and time; and
   (iii) the bid or proposal is received by the purchasing agency on the business day following the specified submission date.
(b) A bid or proposal that is in the possession of a purchasing agency’s internal distribution system at the specified opening date and time shall be deemed to be received by the purchasing agency by the specified date and time.
(c) In the event of a labor unrest (strike, work slowdown, etc.) which may affect mail delivery, the executive director or his or her designee is authorized to develop and issue emergency procedures.
(d) In those situations where the late bid or proposal was not in the control of the vendor at the time of the bid or proposal submission date and time, the procurement official shall not accept the late bid or proposal unless he or she further finds that extenuating circumstances justifying acceptance of the late bid or proposal exist and can be documented.
(e) The responsibility for ensuring that the bid or proposal is received on time rests with the vendor, and the reasonably foreseeable problems inherent in the delivery of bids or proposals (e.g. slow messengers, slow mail service, weather, bad directions, mechanical failures, traffic, etc.) are not extraordinary circumstances permitting acceptance of late bids or proposals.
R-24-103-201-11 Bid or Proposal Submissions
(a) Telephone bids from vendors will not be accepted, except for small purchases allowed in section 24-103-204, C.R.S., and emergency procurements under section 24-103-206, C.R.S., or when the procurement official makes a written determination that market conditions are of such nature that it is in the best interest of the state to solicit telephone bids.
(b) Bids or proposals may be submitted electronically via an electronic procurement system when the terms of the solicitation permit electronic submission.
(c) Bids or proposals may be submitted electronically via means other than an electronic procurement system only if the solicitation permits electronic submission and the method of submission is approved by the department.
(d) Bids or proposal shall allow for a minimum of 180 calendar days for acceptance by the state, unless otherwise specified in the solicitation. The procurement agent may require that bidders or offerors extend the time for acceptance by the state, provided that no other change is permitted.
(e) Bids or proposals that do not comply with rules R-24-103-201-01 through R-24-103-201-11 will be rejected.

R-24-103-201-12 Alternate Bids or Offers
(a) An alternate bid or proposal means an offer or response submitted in response to a solicitation issued by the state that is in essential compliance with the solicitation terms and conditions but offers an alternate that does not significantly deviate from the required specifications contained in the solicitation. The procurement agent would be responsible for determining whether an alternate bid or proposal is acceptable.
(b) A solicitation may prohibit multiple or alternate bids or proposals. When prohibited the multiple or alternate bids or proposals shall be rejected although a clearly identified base bid or proposal will be considered for award as though it were the only bid or proposal submitted by the bidder or offeror. A solicitation shall specify if multiple or alternate bids or proposals will be allowed and how they will be treated.
(c) Any bid or proposal which is conditioned upon receiving an award under both the particular solicitation for which the bid or proposal is made and another state solicitation shall be deemed nonresponsive and unacceptable.

R-24-103-201-13 Opening and Recording of Bids and Proposals
(a) Upon receipt, all bids and proposals shall be recorded to reflect the date and time they were received by the purchasing agency, but shall not be opened.
(b) Bids and proposals shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the solicitation. A register of bids and proposals shall be prepared which shall include the name of each bidder or offeror that responded.
(c) The procurement agent shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing in accordance with rules R-24-101-401-01 through R-24-101-401-05.
(d) Documented quotes, described in rule R-24-103-204-01, do not require a public opening and may be opened upon receipt. However, a register of responses shall be prepared.
R-24-103-201-14 Discussions
When permitted by the solicitation type, discussions may be held with bidders or offerors for purposes of clarification.
(a) Bids or proposals may be initially classified as:
   (i) acceptable;
   (ii) potentially acceptable, that is, reasonable susceptible of being made acceptable; or
   (iii) unacceptable.
(b) Bidders or offerors shall be accorded fair and equitable treatment. In conducting discussions, auction techniques (except for reverse auctions described in rule R-24-103-208-01) or disclosure of any information derived from responses submitted by competing bidders or offerors is prohibited.

R-24-103-201-15 Evaluation and Award
(a) Each method of source selection shall have a process for evaluation of bids and proposals as determined by the procurement official or his or her designee. Specific requirements for evaluation, if any, are addressed in these rules.
(b) An award indicates the state’s selection of a bid(s) or proposal(s) to receive a contract. However, an award does not mean that a contract has been executed.
(c) No property interest of any nature shall accrue until the awarded contract is approved in accordance with section 24-30-202(2), C.R.S.

R-24-103-201-16 Procurement Records
The purchasing agency administering the procurement shall maintain a record of the procurement in accordance with department policies and all associated technical guidance.

24-103-201.5. Market research - request for information.
(1) A procurement official may conduct market research prior to selecting a method of source selection pursuant to this part 2. The executive director may promulgate rules in accordance with the "State Administrative Procedure Act", article 4 of this title 24, to further define methods of conducting market research.
(2) A request for information may be used as a method to obtain preliminary information about a market or type of available service or product when there is not enough information readily available to write an adequate specification or statement of work. A request for information may ask for input from potential vendors to assist the state in preparing a specification or statement of work for a subsequent solicitation and may ask for pricing information only with the provision that such information would be submitted voluntarily. The request for information must clearly state that no award will result from the request.
(3) When market research has been conducted, the governmental body is not obligated to commit to a method of source selection and may determine that it will not pursue a procurement.
(4) All responses to requests for information are confidential until after an award based on a subsequent solicitation has been made or until the procurement official determines that the state will not pursue a solicitation based on the request for information. After such time, the responses to a request for information shall be
open to public inspection in accordance with the provisions of the "Colorado Open Records Act", part 2 of article 72 of this title 24.

**R-24-103-201.5-01 Market Research**
In addition to requests for information, other sources of market research include, but are not limited to:
(a) Other governmental bodies;
(b) Industry data;
(c) Purchasing networks;
(d) Academic institutions;
(e) Professional associations;
(f) Organizations that gather and analyze research data about business trends; and
(g) Internet and database searches.

**R-24-103-201.5-02 Formal Market Research**
Formal market research is based on a defined need and may be derived from multiple sources. The findings resulting from formal market research should be summarized in a manner that preserves the information and protects any confidential information. Formal market research is encouraged for complex procurements.

**R-24-103-201.5-03 Information Technology Projects**
Due to the complexity of information technology projects and the emerging technology industry, formal market research is required for major information technology projects pursuant to section 24-37-302(1)(a.5), C.R.S., to ensure that the state is including the most appropriate information technology requirements in its solicitations.

**R-24-103-201.5-04 Valid Procurement Need**
Solicitations should only be issued when there is a valid procurement need. Solicitations should not be issued to obtain estimates or to “test the water.” A governmental body should use market research as a means to gain information when the procurement need is being assessed.

**24-103-202. Invitation for bids.**
(1) Contracts shall be solicited by an invitation for bids except as otherwise provided in section 24-103-201.
(2) An invitation for bids shall be issued and shall include a purchase description and all contractual terms and conditions applicable to the procurement.
(3) Adequate public notice of the invitation for bids shall be given a reasonable time, but in the case of construction at least fourteen days, prior to the date set forth therein for the opening of bids, pursuant to rules. Such notice may include publication in a newspaper of general circulation.
(4) Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as may be specified by rules, together with the name of each bidder, shall be entered on a record, and the record shall be open to public inspection. After the time of the award, all bids and bid documents shall be open to
public inspection in accordance with the provisions of sections 24-72-203 and 24-72-204.

(5) Bids shall be unconditionally accepted, except as authorized by subsection (7) of this section. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in the evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs. No criteria may be used in the bid evaluation that are not set forth in the invitation for bids.

(6) Withdrawal of inadvertently erroneous bids before the award may be permitted pursuant to rules if the bidder submits proof of evidentiary value which clearly and convincingly demonstrates that an error was made. Except as otherwise provided by rules, all decisions to permit the withdrawal of bids based on such bid mistakes shall be supported by a written determination made by the chief procurement officer or the procurement official.

(7) The contract shall be awarded with reasonable promptness by written notice to the low responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids, except as otherwise provided for certain low tie bids under section 24-103-902. In the event that all bids for a construction project exceed available funds, as certified by the appropriate fiscal officer, the procurement official is authorized, in situations where time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsible bidder in order to bring the bid within the amount of available funds; except that the functional specifications integral to completion of the project may not be reduced in scope, taking into account the project plan, design, and specifications and quality of materials.

(8) When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

(9) The provisions of subsections (4), (5), and (6) of this section shall also apply to construction and shall be in addition to any other requirements for an invitation for bids for construction as provided for in this title 24.

R-24-103-202-01 Invitation for Bids
A contract may be awarded by an invitation for bids. Unless otherwise specified, the general rules under rule R-24-103-201 shall apply to invitations for bids.
R-24-103-202-02 Bid Evaluation and Award

(a) Following determination of acceptability of goods or services, bids shall be evaluated to determine which bidder offers the lowest cost to the state in accordance with specifications.

(b) Discussions with bidders are permitted only if there has been a mistake in bids in accordance with rule R-24-103-201-08.

(c) In the event an evaluation based on value analysis or other cost formulas will be used, this information shall be set forth in the invitation for bids.

(d) A contract may not be awarded to a bidder submitting a higher quality item than that designated in the invitation for bids unless such bidder is also the lowest bidder as determined by value analysis or life cycle cost formulas as permitted in section 24-103-202, C.R.S., and this rule.

(e) The provisions of section 24-103-904, C.R.S., which require a preference for environmentally preferable products apply to the award of contracts under this rule.

(f) The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

R-24-103-202-03 Multi-Step Invitation for Bids

A contract may be awarded by a multi-step invitation for bids. Unless otherwise specified, the general rules under rule R-24-103-201 shall apply to multi-step invitations for bids.

(a) A multi-step invitation for bids is a two-phase process consisting of a technical first phase of one or more steps in which bidders submit un-priced technical bids to be evaluated by the state. Those bidders whose technical bids are determined to be acceptable during the first phase will be eligible to participate in the pricing second phase. The price bids of eligible bidders will be opened and considered during the second phase.

(b) The solicitation for a multi-step invitation for bids may require all bidders to submit both the technical bid and the price bid prior to the solicitation closing date. In the alternative, the solicitation may require all bidders to submit the technical bid prior to the solicitation pricing date. Only those bidders whose technical bids are determined to be acceptable will be asked to submit price bids.

(c) The multi-step invitation for bids method may be used when it is not practical to prepare a definitive description of the items being purchased, which would be sufficient to permit an award based on price.

24-103-202.3. Invitation for best value bids.

(1) When, pursuant to rules, the chief procurement officer or a procurement official determines in writing that the use of an invitation for best value bids is advantageous to the state, a contract may be solicited by invitation for best value bids.

(2) An invitation for best value bids shall be made in the same manner as provided in section 24-103-202 (2), (3), and (4).

(3) (a) The chief procurement officer or procurement official may allow a bidder to submit prices for enhancements, options, or alternatives to the base bid for a commodity or service that will result in a product or service to the state having the best value at the lowest cost. The invitation for best value bids
must clearly state the purchase description of the commodity or service being solicited and the types of enhancements, options, or alternatives that may be bid; except that the functional specifications integral to the commodity or service may not be reduced.

(b) Prices for enhancements, options, or alternatives to the bid may be evaluated by the chief procurement officer or procurement official to determine whether the total of the bid price and the prices for enhancements, options, or alternatives provide a contract with the best value at the lowest cost to the state. This evaluation shall be made utilizing the rules of the executive director of the department of personnel promulgated pursuant to subsection (3)(d) of this section.

(c) A contract may be awarded to a bidder where the total amount of a bid price and the prices for enhancements, options, or alternatives of the bidder exceed the total amount of the bid price and the prices for enhancements, options, or alternatives of another bidder if it is determined pursuant to subsection (3)(b) of this section that the higher total amount provides a contract with the best value at the lowest cost to the state.

(d) The executive director of the department of personnel shall promulgate rules to be utilized by the chief procurement officer or procurement official in making the evaluation pursuant to subsection (3)(b) of this section. The rules shall provide:

(I) Criteria for objectively measuring prices for enhancements, options, or alternatives to a bid, including relevant formulas or guidelines;

(II) Criteria for objectively determining whether the prices for enhancements, options, or alternatives provide the best value at the lowest cost to the state.

(4) The contract shall be awarded with reasonable promptness by written notice to the bidder whose bid provides for a contract with the best value at the lowest cost to the state.

**R-24-103-202.3 Invitation for Best Value Bids**

A contract may be awarded by an invitation for best value bids. Unless otherwise specified, the general rules under rule R-24-103-201 shall apply to invitations for best value bids.
R-24-103-202.3-01 Definitions
For purposes of section 24-103-202.3, C.R.S., and rules R-24-103-202.3 through R-24-103-202.3-03, the following definitions apply.
(a) “Base bid” means the minimum functional requirements set forth in the bid, as issued by the state.
(b) “Enhancements” means components, services, or products that exceed the minimum functional requirements and would improve the quality of the products or services being procured by the state.
(c) “Options” means choices of additional components, services, or products that would provide increased value to the state beyond the base bid.
(d) “Alternatives” means a different product or service that meets or exceeds the functional requirements of the base bid.
(e) “Best value” means the lowest overall cost to the state after taking into consideration costs, benefits, and savings.

R-24-103-202.3-02 Evaluation
(a) Bids shall be evaluated against the minimum functional requirements in the base bid. All bids meeting these requirements shall be determined to be responsive.
(b) The invitation for best value bids shall expressly allow for enhancements, options, and/or alternatives to include pricing. The invitation for best value bid shall set forth the criteria or formula to be used for evaluation. The criteria or formula for evaluation must include objective consideration of the costs and savings and/or benefits associated with the enhancements, options, or alternatives.

R-24-103-202.3-03 Award
Based on the evaluation of the cost of the base bid, the dollar value of enhancements, options, or alternatives, and the determination of which enhancements, options, or alternatives best meet the needs of the state, an award shall be made to the bidder whose bid meets the minimum functional requirements in the base bid and provides the best value to the state.

24-103-202.5. Low tie bids - award procedure and determination - bid preference. (Repealed)

24-103-203. Requests for proposals.
(1) A contract may be entered into by requests for proposals. Requests for proposals may be used for the procurement of professional services. The executive director may provide by rule that it is neither practicable nor advantageous to the state to procure specified types of supplies, services, or construction by an invitation for bids.
(2) Proposals shall be solicited through a request for proposals.
(3) Adequate public notice of the request for proposals shall be given in the same manner as provided in section 24-103-202 (3).
(4) Repealed.
(5) The request for proposals shall state evaluation factors.
(6) As provided in the request for proposals and pursuant to rules, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for an award for the purpose of clarification.
to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(7) The award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. No property interest of any nature shall accrue until the contract is awarded and signed by both parties.

(8) The procurement official, or his or her designee, shall negotiate, in the case of procurement of professional services, with the highest qualified offerors and in that negotiation shall take into account, in the following order of importance, the professional competence of the offerors, the technical merits of the offers, and the price for which the services are to be rendered.

R-24-103-203 Request for Proposals
A contract may be awarded by a request for proposals. Unless otherwise specified, the general rules under rule R-24-103-201 shall apply to requests for proposals. A request for proposals is intended to solicit proposals from potential vendors to determine the best method for achieving a specific goal or solving a particular problem and identify responsive vendors. The state may determine which of the responsive proposals is most advantageous.

R-24-103-203-01 Content of Request for Proposals
The request for proposals must include, at a minimum, a statement of work or specifications that address the specific goals or problems that are the subject of the solicitation, proposed terms of the resulting contract, and evaluation factors.

R-24-103-203-02 Evaluation of Proposals
The request for proposals shall state all of the evaluation factors, including price. The evaluation shall be based on the evaluation factors set forth in the request for proposals. Numerical rating systems may be used. Factors not specified in the request for proposals shall not be considered. Vendors should submit their most favorable response as the initial response and not assume there will be an opportunity for discussions.
R-24-103-203-03 Proposal Discussion with Individual Offerors after Opening
(a) After proposals have been opened, discussions may be held with responsible offerors whose proposals are determined to be reasonably susceptible to be selected for award to:
   (i) promote understanding of the state's requirements and the offerors’ proposals; and
   (ii) facilitate a contract that will be most advantageous to the state taking into consideration price and the other evaluation factors set forth in the request for proposals.
(b) Offerors shall be accorded fair and equitable treatment in discussion and revision of their proposals. The offeror may make adjustments in goods or services and in costs and/or prices. Any changes to the technical or pricing portions of the proposal, shall be confirmed in writing by the offeror(s).

R-24-103-203-04 Award
(a) Awards shall be made to the responsible offeror whose proposal is determined to be most advantageous to the state based on the evaluation factors set forth in the request for proposals.
(b) The evaluation committee established to evaluate offers shall make such determination and make a recommendation to the procurement official or his or her designee. If the procurement official or his or her designee approves the recommendation, an award shall be made in accordance with the recommendation.

24-103-204. Small purchases.
Any procurement not exceeding the amount established by rule may be made in accordance with small purchase procedures established by rules, but procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.

R-24-103-204 Small Purchases
A contract may be awarded by small purchases procedures. Procurements shall not be artificially divided so as to constitute small purchases under this rule.
### R-24-103-204-01 Documented Quotes

A contract for small purchases may be awarded by a documented quote. Unless otherwise specified, the general rules under rule R-24-103-201 shall apply to documented quotes.

(a) The deadline for submission of responses to a documented quote is flexible unless otherwise stated in the documented quote.

(b) For goods and services procurements, neither the solicitation nor the vendor’s response constitutes an offer; therefore, responsiveness at the time of receipt is not an absolute criterion. The procurement official or his or her designee may determine whether a response is acceptable and may compare the relative value of competing responses, not solely the price. “Acceptable,” for purposes of this paragraph and paragraphs (c) and (d) below, means that the good or service will meet the state’s needs and that the price is fair and reasonable. The commitment voucher constitutes an offer. The vendor may accept by performance, unless the commitment voucher expressly requires acceptance by written acknowledgment.

(c) The choice of vendor for goods and services must be based on which acceptable response is most advantageous to the state, price/cost being the primary consideration. The basis for the selection must be documented and will be final and conclusive unless determined to be arbitrary, capricious, or contrary to law.

(d) The procurement official or his or her designee may negotiate with any vendor or contractor to clarify its quote or to effect modifications that will make the quote acceptable (including curing a defective bid bond) or more advantageous to the state; provided, that the requirements in the documented quote solicitation may not be negotiated. During the negotiation process, the terms of a vendor’s quote shall not be revealed to a competing vendor. All quotes shall be kept confidential until an award is made on an electronic procurement system.

### 24-103-205. Sole source procurement.

A contract may be awarded for a supply, service, or construction item without competition when, under rules, the executive director, chief procurement officer, the procurement official, or a designee of any such officer determines in writing that there is only one source for the required supply, service, or construction item.
**R-24-103-205 Sole Source Procurements**

Contracts may be awarded by use of a sole source procurement only if the following conditions are met:

(a) A sole source procurement is justified when there is only one good or service that can reasonably meet the need and there is only one vendor who can provide the good or service. A requirement for a particular proprietary item (i.e., a brand name specification) does not justify a sole source procurement if there is more than one potential bidder or offeror for that item.

(b) The procurement official or his or her designee shall make a written determination that a procurement is sole source, setting forth the reasons. In cases of reasonable doubt, competition should be solicited. Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other contractors will be suitable or acceptable to meet the need.

(c) When a sole source procurement is authorized, the procurement official or his or her designee shall conduct negotiations, as appropriate, as to price, delivery, and terms.

(d) When applicable, the procurement official or his or designee shall publish a notice of the sole source on an electronic procurement system for not less than three business days in accordance with section 24-106-103(5), C.R.S.

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**24-103-206. Emergency procurements.**

Notwithstanding any other provision of this code, the executive director, the chief procurement officer, the procurement official, or a designee of any such officer may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions, as defined in rules, but such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

**R-24-103-206 Emergency Procurements**

A contract may be awarded by an emergency procurement when an emergency condition arises.

**R-24-103-206-01 Definition of Emergency Conditions**

An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as may be identified by the using agency and approved by the procurement official or his or her designee. In the event that emergency controlled maintenance funding is requested, the office of the state architect shall also be notified by the next business day. The existence of such condition creates an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten the:

(a) functioning of state government, or its programs;

(b) preservation or protection of property; or

(c) health or safety of any person or persons.
R-24-103-206-02 Scope of Emergency Procurements
Emergency procurements shall be limited to supplies, services, or construction items in such quantities as are necessary to meet the emergency.

R-24-103-206-03 Authority to Make Emergency Procurements
Any governmental body may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods; provided, that whenever practical, approval by the procurement official or his or her designee shall be obtained prior to the procurement. In the event an emergency arises after normal business hours, the governmental body shall notify the procurement official or his or her designee on the next business day.

R-24-103-206-04 Source Selection Methods
(a) The procedure used shall be selected to assure that the required supplies, services, or construction items are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.
(b) The procurement official or his or her designee shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor or contractors. If approval from the procurement official or his or her designee is not provided prior to the procurement, the written determination shall be made by the individual involved in making the selection of the contractor or contractors on behalf of the state. Such determination shall be sent promptly to the procurement official or his or her designee.

24-103-206.5. Procurements funded with federal "American Recovery and Reinvestment Act of 2009" moneys - waiver of "Procurement Code" requirements - repeal. (Repealed)

24-103-207. State purchases of recycled paper and recycled products. (Repealed)

24-103-207.5. Purchasing preference for environmentally preferable products – definitions. (Repealed)

24-103-208. Other procurement methods.
The executive director may establish, by rule, other competitive procurement methods that are deemed to be in the best interest of the state and that are consistent with the provisions of section 24-101-102, including, but not limited to, reverse auctions. For the 2004-05 fiscal year and every other fiscal year thereafter, the state auditor shall review the competitive procurement methods established pursuant to this section.
R-24-103-208 Other Procurement Methods
In addition to the methods of procurement identified in section 24-103-201, C.R.S., the following other procurement methods are allowed:
(a) Competitive reverse auctions;
(b) Competitive negotiation;
(c) Invitation to negotiate; and
(d) Special circumstance procurement.

R-24-103-208-01 Competitive Reverse Auctions
Contracts for goods and services may be awarded by competitive reverse auctions if the procurement official determines that adequate competition, as defined in rule R-24-103-403-01, can be achieved and that the process is likely to result in better pricing. Unless otherwise specified, the general rules under rule R-24-103-201 shall apply to competitive reverse auctions. Competitive reverse auction means a bidding process through which a pre-established group of vendors may post bids for a defined period of time and change their bids as desired during the bidding period.
(a) An electronic procurement system notice shall include all terms, conditions, and specifications and provide instruction for participating in the process. If the procurement official believes that an electronic procurement system is not likely to yield adequate competition, the purchasing agency may notify potential vendors through additional methods.
(b) All responsible vendors willing to accept the terms and conditions of the procurement and to meet the specifications of the bid shall be eligible to participate. The purchasing agency may conduct a preliminary evaluation to determine vendor responsibility and to ensure the vendor’s responsiveness to terms and specifications.
(c) During the bidding process, the participating vendors shall be identified only by a letter, number, or other symbol to protect their identities. Each bid price and the letter, number, or symbol designation of the vendor shall be made available to all bidding vendors immediately upon receipt by the purchasing agency.
(d) The contract shall be awarded to the lowest responsible bidder whose bid meets the requirements and specifications.
R-24-103-208-02 Competitive Negotiation

Contracts may be awarded by competitive negotiation.

(a) After an unsuccessful solicitation process, a contract may be awarded by competitive negotiation if the procurement official determines that time does not permit re-solicitation.

(b) A solicitation process is unsuccessful if (1) all offers received are unreasonable or not individually competed; (2) the low bid exceeds available funds; (3) the solicitation has been properly cancelled in accordance with the provisions of section 24-103-301, C.R.S., or part 5 of article 109 of the code (except sections 24-109-503 and 24-109-504, C.R.S., which require prior approval from executive director or his or her designee); or (4) the number of responsive offers is not adequate to ensure adequate competition.

(c) The competitive negotiation process shall include all vendors who responded to the solicitation or any rebid and may include other vendors capable of fulfilling the state’s needs.

(d) The purchasing agency may set reasonable times and locations for participation in the competitive negotiation, reflecting the fact that time constraints are the basis for the competitive negotiation process.

(e) Each vendor with whom the purchasing agency negotiates shall be given a fair and equitable chance to compete. Negotiations shall be conducted separately and independently with each vendor. In no case shall the terms of any vendor’s offer be communicated to any other vendor until an intent to award notice has been issued. Any change in requirements shall be communicated to all vendors participating in the competitive negotiation.

(f) A vendor may be eliminated from the process upon a determination that its offer is not reasonably susceptible of being selected for award.

(g) The award shall be made to the vendor whose offer is most advantageous to the state, taking into consideration the price and the evaluation factors set forth in the solicitation. The procurement official shall make a written determination that identifies the nature of the discussions with each vendor and that states why the selected offer is the most advantageous to the state.
### R-24-103-208-03 Invitation to Negotiate

Contracts may be awarded by an invitation to negotiate. Unless otherwise specified, the general rules under rule R-24-103-201 shall apply to invitations to negotiate. The invitation to negotiate is intended to solicit responses from potential vendors to determine the best method for achieving a specific goal or solving a particular problem to identify one or more responsive vendors with which the state may negotiate to determine the response that is most advantageous.

(a) The invitation to negotiate must include, at a minimum, a statement of work or specifications that address the specific goals or problems that are the subject of the solicitation, proposed terms of the resulting contract, and evaluation factors. The invitation to negotiate must describe which items can be negotiated and which are non-negotiable. Anything that is identified as non-negotiable is considered mandatory and may not be waived by the state. Evaluation factors are non-negotiable.

(b) The state shall evaluate responses against all evaluation factors set forth in the invitation to negotiate. Numerical rating systems may be used. Prior to determining the competitive range of responses reasonably susceptible of award, the state, in its discretion, may hold discussions with any or all responsible vendors who submit responses for the purpose of clarification to assure understanding of the solicitation requirements and the vendor’s responses. Vendors shall be accorded fair and equitable treatment. The evaluation, including the results of any discussions, shall result in the determination of a competitive range of responses reasonably susceptible of award.

(c) The state shall commence negotiations with those vendors whose responses are determined to be in the competitive range. The state may discontinue negotiations with a vendor if the state determines that the response is no longer reasonably susceptible of award. The purpose of negotiations is to facilitate a contract that will be most advantageous to the state, taking into consideration price and the other evaluation factors set forth in the invitation to negotiate.

(d) The committee(s) established to evaluate the responses and negotiate with vendors whose proposals are in the competitive range shall make a recommendation to the procurement official or his or her designee. If the procurement official or his or her designee approves the recommendation, an award shall be made in accordance with the recommendation.

(e) The award shall be made to the responsible vendor whose response is determined in writing to be the most advantageous to the state, taking into consideration the price and the evaluation factors set forth in the invitation to negotiate and the result of negotiations. No other factors or criteria shall be used in the evaluation.

(f) The procurement record shall contain the basis on which the award is made along with an explanation of why the award provides the best value to the state.
R-24-103-208-04 Special Circumstance Procurement
A contract may be awarded by use of a special circumstance procurement. A special circumstance exists where competition is required but procurement methods available in the code or these rules are contrary to the public interest or not advantageous to the state. In these situations, the procurement official may initiate a special circumstance procurement.

(a) Examples of special circumstance include, but are not limited to:
   (i) the market for providing a good or service is limited based on specific, tangible requirements;
   (ii) the market has not matured to the point of providing adequate competition, as defined in rule R-24-103-403-01; or
   (iii) disclosure of the requirements for the goods or services is contrary to the public interest.

(b) To qualify a procurement as a special circumstance procurement, the procurement official shall provide a written request to the chief procurement officer, stating the reasons the procurement qualifies as a special circumstance. This request should be supported by sufficient market research and address the requirement of fair and reasonable pricing.

(c) The determination of the chief procurement officer as to whether the procurement qualifies as a special circumstance procurement shall be final.

24-103-209. Purchase of compost by governmental bodies – definitions. (Repealed)


24-103-211. Service-disabled veteran owned small businesses - state procurement set aside - definitions. (Repealed)

PART 3. CANCELLATION OF INVITATIONS FOR BIDS OR REQUESTS FOR PROPOSALS

24-103-301. Cancellation of invitations for bids or requests for proposals.
An invitation for bids, a request for proposals, or any other solicitation may be cancelled or any or all bids or proposals may be rejected in whole or in part at any time before a contract is executed when it is in the best interests of the state pursuant to rules. The reasons therefor shall be made part of the contract file but shall remain confidential and shall not be subject to the provisions of the “Colorado Open Records Act”, part 2 of article 72 of this title 24, for the lesser of six months or until the contract at issue is awarded.
### R-24-103-301 Cancellation of Solicitations and Awards

The provisions of this rule shall govern the cancellation of any solicitations or other source selection methods, the rejection of bids or proposals in whole or in part, for being non-responsive or non-responsible and the cancellation of awards.

### R-24-103-301-01 Cancellation of Solicitation: Rejection of All Bids or Proposals

A solicitation may be cancelled only when there are cogent and compelling reasons to believe that the cancellation of the solicitation is in the state's best interest.

(a) A solicitation may be cancelled, in whole or in part, when the procurement official determines in writing that such action is in the state's best interest. Reasons for cancelling a solicitation include, but not limited to:

(i) the state no longer requires the supplies, services, or construction;

(ii) the state no longer can reasonably expect to fund the procurement;

(iii) prices exceed available funds and it would not be appropriate to adjust quantities or qualities to come within available funds;

(iv) all responsive bids or proposals received are at clearly unreasonable prices;

(v) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith;

(vi) the solicitation did not provide for consideration of all factors of significance to the state;

(vii) ambiguous or otherwise inadequate specifications were part of the solicitation; or

(viii) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

(b) When a solicitation is cancelled, a notice of cancellation should be sent to all persons that submitted bids or proposals.

(c) The reasons for cancellation or rejection shall be made a part of the procurement record and shall be confidential for the period of time specified in section 24-103-301, C.R.S.

(d) When a solicitation is cancelled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the procurement record, or if unopened, returned to the bidders or offerors upon request, at their expense, or otherwise disposed of.

### R-24-103-301-02 Cancellation of Award

An award of a contract under a solicitation may be cancelled, in whole or in part, when the procurement official determines in writing that such action is in the state's best interest. Reasons supporting the cancellation of an award include those identified in rule R-24-103-301-01. The cancellation of an award does not require cancellation of the solicitation. No property interest of any nature shall accrue until the awarded contract is approved in accordance with section 24-30-202(2), C.R.S.
R-24-103-301-03 Waiver of Non-Material Mandatory Requirements in Solicitations
The procurement official has the authority to waive mandatory requirements in a solicitation in the event:
(a) The procurement official has determined that the requirements are not material;
(b) The solicitation discloses that the state has reserved this right;
(c) The mandatory requirements have not been met by any of the respondents to the solicitation;
(d) The waiver does not create a disadvantage to the state;
(e) The waiver does not benefit any individual bidder or offeror; and
(f) The waiver does not prejudice any non-winning bidder or offeror or potential bidder or offeror.

PART 4. QUALIFICATIONS AND DUTIES

24-103-401. Responsibility of bidders and offerors.
(1) A written determination of nonresponsibility of a bidder or offeror shall be made pursuant to rules. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.
(2) Information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the department of personnel or the purchasing agency without prior written consent by the bidder or offeror.

R-24-103-401 Responsibility of Prospective Contractors or Vendors
A determination of responsibility or non-responsibility shall be governed by these rules.

R-24-103-401-01 Standards of Responsibility
(a) Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor or vendor:
   (i) has or can obtain the appropriate financial, material, equipment, facility, personnel resources and expertise to indicate the capability to meet all contractual requirements;
   (ii) has a satisfactory record of performance;
   (iii) has a satisfactory record of integrity;
   (iv) does not appear on any debarred lists;
   (v) is qualified legally to contract with the state; and
   (vi) has supplied all necessary information in connection with the inquiry concerning responsibility.
(b) The prospective contractor or vendor shall supply information requested by the procurement official concerning the responsibility of such contractor. If such contractor or vendor fails to supply the requested information, the chief procurement officer or procurement official shall base the determination of responsibility upon any available information.
**R-24-103-401-02 Ability to Meet Standards**
The prospective contractor or vendor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:
(a) Evidence that such contractor possesses such necessary items;
(b) Acceptable plans to subcontract for such necessary items; or
(c) A documented commitment from, or explicit arrangement with a satisfactory source to provide the necessary items.

**R-24-103-401-03 Written Determination of Non-Responsibility Required**
If a prospective contractor or vendor who otherwise would have been awarded a contract is found to be non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the procurement official. A copy of the determination shall be sent promptly to the non-responsible prospective contractor or vendor. The determination shall be made part of the procurement record.

**24-103-402. Prequalification of suppliers.**
Prospective suppliers may be prequalified for particular types of supplies, services, and construction, and the method of compiling and soliciting from lists of potential contractors may be pursuant to rules.

**R-24-103-402 Prequalification of Suppliers**
(a) The procurement official may develop pre-qualification procedures for specific solicitations.
(b) Colorado labor shall be employed on a public works project unless a waiver is allowed pursuant to section 8-17-101, C.R.S.

**24-103-403. Cost or pricing data.**
(1) A contractor shall, except as provided in subsection (3) of this section, submit cost or pricing data and shall certify that, to the best of his or her knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually determined specified date prior to the date of:
(a) The pricing of any contract awarded by requests for proposals as specified in section 24-103-203, or pursuant to the sole source procurement authority as specified in section 24-103-205, where the total contract price is expected to exceed an amount established by rule; or
(b) The pricing of any contract modification which is expected to exceed an amount established by rule.
(2) Repealed.
(3) The requirements of this section need not be applied to any contract in which:
(a) The contract price is based on adequate price competition;
(b) The contract price is based on established catalog prices or market prices;
(c) The contract price is set by law or rule; or
(d) It is determined in writing, pursuant to rules, that the requirements of this section may be waived and the reasons for such waiver are stated in writing.
R-24-103-403-01 Cost or Pricing Data Definitions

(a) "Cost data" is factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(b) "Pricing data" is factual information concerning prices for supplies, services, or construction substantially identical to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices, and current selling prices of such supplies, services or construction. The definition refers to data relevant to both prime and subcontract prices.

(c) "Adequate competition" exists if a solicitation has been conducted and at least two responsible and responsive offerors have independently competed to provide the state’s needed supplies or services. If the foregoing conditions are met, competition shall be presumed to be “adequate” unless the procurement official or his or her designee determines, in writing that such competition is not adequate.

R-24-103-403-02 Requirement for Cost or Pricing Data

(a) Cost data and pricing data shall not be required where the contract price is based on:
   (i) adequate competition;
   (ii) established catalog prices;
   (iii) law or rule; or
   (iv) where the requirements are waived by the procurement official.

(b) Unless otherwise specified in these rules, a contractor shall submit cost or pricing data for the pricing of any contract to include sole source procurements, described in rules R-24-103-205 and R-24-105-101.5, where the total contract value is expected to exceed $150,000.

(c) Unless otherwise specified in these rules, a contractor shall submit cost data or pricing data for the pricing of any contract modification which is expected to exceed ten percent of the total contract value.

(d) The procurement official or his or her designee may request cost data or pricing data to be provided within a reasonable time and in a reasonable manner.

(e) Any disputes related to the submission of cost data or pricing data are subject to the contractor’s rights in accordance with article 109 of the code.

R-24-103-403-03 Defective Cost or Pricing Data

(a) If cost data or pricing data are found to have been inaccurate, incomplete, or non-current as of the date submitted by the contractor, the state is entitled to an adjustment of the contract price to account for the defect.

(b) Judgmental errors made in good faith concerning the estimated portions of future costs or projections do not constitute defective data.

24-103-404. Motor carriers. (Repealed)

PART 5. TYPES OF CONTRACTS

24-103-501. Types of contracts. (Repealed)
24-103-502. Approval of accounting system. (Repealed)

24-103-503. Multiyear contracts. (Repealed)

PART 6. AUDIT OF RECORDS

24-103-601. Right to audit records. (Repealed)

PART 7. DETERMINATIONS AND REPORTS

24-103-701. Finality of determinations.
The determinations required by this code are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

24-103-702. Reporting of anticompetitive practices.
When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general.

PART 8. SET ASIDES IN STATE PROCUREMENT FOR ALL PERSONS WITH SEVERE DISABILITIES

24-103-801. Legislative declaration.
(1) The general assembly hereby finds and declares that:
   (a) It is in the best interest of the state to enhance the dignity and capacity for self-support of all persons with severe disabilities and to minimize their dependence on government programs for their basic needs; and
   (b) It benefits the state as well as all persons with severe disabilities to encourage and assist all persons with severe disabilities to achieve maximum personal independence through useful and productive gainful employment by identifying a market for the services that they can offer.

(2) The general assembly further finds and declares that the purpose of this part 8 is to create a set aside program for nonprofit agencies that employ any persons with severe disabilities and to allow nonprofit agencies to bid on certain types of services solicitations. In furtherance of this purpose, the general assembly recognizes that it is in the best interests of all persons with severe disabilities that the employment options created pursuant to this part 8 expand the opportunities for all persons with severe disabilities to work in integrated employment settings.

24-103-802. Definitions.
As used in this part 8, unless the context otherwise requires:

(1) "Bundling" means a state agency consolidating two or more solicitations for services previously provided or performed under separate smaller contracts into a single solicitation that is likely to be unsuitable for award to a nonprofit agency due to any of the following:
   (a) The diversity, size, or specialized nature of the elements of the required services;
   (b) The aggregate dollar value of the anticipated award; or
   (c) The geographical dispersion of the contract performance sites.
(2) "Department" means the department of human services.

(3) "Nonprofit agency" means a private nonprofit organization established under the laws of the United States or this state that is operated in this state in the interest of persons with severe disabilities or that specializes in services for persons with severe disabilities, the net income of which does not benefit in whole or in part any shareholder or officer.

(4) "Self-certified vendor" means a nonprofit agency that has applied and been approved by the department to bid on certain services solicitations pursuant to this part 8.

(5) "Services solicitation" means a solicitation by a state agency for the furnishing of labor, time, or effort by a contractor not involving the delivery of a specific end product other than products that are merely incidental to the required performance.

(6) "Severe disability" means one or more physical or mental disabilities that constitute a substantial impairment to employment and that are of such a nature as to require multiple vocational rehabilitation services over an extended period.

(7) "State agency" means any state office, department, commission, institution, or bureau, or any agency, division, or unit within a department or office. Notwithstanding the provisions of section 24-101-105, "state agency" shall include each institution of higher education and the Colorado commission on higher education. "State agency" shall not include any municipality, county, school district, special district, or any other local government in the state.

R-24-103-802 Definitions
All terms used in rules under this part 8 have the same meaning as defined in section 24-103-802, C.R.S. Section 24-103-802(2), C.R.S., defines “department” as the department of human services, solely for the purposes of part 8 of article 3 of the code.


(1) Any nonprofit agency that is interested in performing state services and that would like to bid on solicitations for such services through the set aside program created in this part 8 shall first apply to the department, in a manner to be determined by the department, to become a self-certified vendor pursuant to this section.

(2) The department shall accept applications from any nonprofit agency that seeks to become a self-certified vendor to bid on certain services solicitations. In order for a nonprofit agency to become a self-certified vendor, the nonprofit agency shall certify that:

(a) The nonprofit agency is an independent tax-exempt charitable or social welfare organization operating under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, and is operating in Colorado;

(b) Repealed.

(c) The nonprofit agency satisfies the statutory requirements to be eligible to bid on a state services solicitation pursuant to section 24-103-401 and any rules promulgated by the department of personnel in furtherance of said section;

(d) The nonprofit agency would be capable of hiring and would employ people to perform any service for which the nonprofit agency bids, and that of those people employed a total of seventy-five percent would be persons with severe disabilities and a minimum of twenty percent would be persons with severe disabilities who have developmental disabilities as defined in section 25.5-10-202, C.R.S.; and
(e) Any other criteria consistent with the purposes of this part 8 that are deemed necessary by the department.

(3) The department shall create and maintain a list of all nonprofit agencies that have attained self-certified vendor status and shall make the list available to the department of personnel pursuant to rules promulgated by the executive director.

(4) A nonprofit agency’s self-certified vendor status is valid for up to five years after the date that the nonprofit agency’s self-certification application was approved. A nonprofit agency is required to reapply to the department, at a time and in a manner determined by the department, for self-certified vendor status to be eligible to respond to a set aside solicitation pursuant to this part 8.

(5)
(a) Nothing in this part 8 shall be construed to require a nonprofit agency that seeks to respond to services solicitations to become a self-certified vendor; except that a nonprofit agency shall not be eligible to bid for a set aside solicitation pursuant to this part 8 unless the nonprofit agency is self-certified pursuant to this section.

(b) Nothing in this part 8 shall be construed to prevent a nonprofit agency from bidding on any state agency solicitation that is not a set aside solicitation pursuant to this part 8.

R-24-103-803-01 Nonprofit Agencies – Application
A nonprofit agency seeking inclusion on the self-certified vendor list shall complete an application describing the services it is able to provide and certifying its eligibility as a self-certified vendor. The department shall make the application form available electronically and shall accept applications for consideration throughout the calendar year. Approved applications will be added the self-certified vendor list in accordance with rule R-24-103-804-01.

R-24-103-803-02 Self-certified Vendor List – Creation
The department shall update the self-certified vendor list to include newly self-certified vendors and remove vendors that have not recertified pursuant to section 24-103-803(4), C.R.S.

24-103-804. Services solicitations - categorical identification.

(1)

(a) The department of personnel shall publish a list of the services that state agencies seek through services solicitations and shall make the list available to nonprofit agencies on an annual basis. The executive director shall promulgate rules regarding the process for review, determinations, and publication of a list that shall be referred to as the services set aside list.

(b) (Deleted by amendment, L. 2017)

(2) and (3) (Deleted by amendment, L. 2017)
R-24-103-804-01 Services Set Aside List – Creation, Determination, and Review

(a) The department shall review each application for certification as required in section 24-103-803(2), C.R.S.

(b) The department shall identify a specific date for updating the services set aside list annually with new self-certified vendors and services, if any. As determined by the department, quarterly updates to the services set aside list may be made for new self-certified vendors or services accepted in accordance with section 24-103-803(2), C.R.S.

R-24-103-804-02 Services Set Aside List – Publication

The department shall provide the services set aside list to the chief procurement officer, who shall make the services set aside list available to all state agencies electronically.


(1) Any state agency that intends to solicit bids for a service that is included on the services set aside list created pursuant to section 24-103-804 shall first solicit bids from self-certified vendors for such service and shall follow the procedures specified in rules promulgated by the executive director.

(a) If two or more self-certified vendors bid on the solicitation for the services, the procurement official shall award a contract to one of the self-certified vendors based on which acceptable response is most advantageous to the state taking into consideration factors other than price alone.

(c) If one self-certified vendor bids on the solicitation for the services, the procurement official shall award a contract to the self-certified vendor and shall ensure that the contract is awarded at a fair and reasonable price of up to fifteen percent above the fair market value of the services, subject to available appropriations.

(d) If the state agency does not receive a bid from any self-certified vendor for the services, the state agency is permitted to procure the services through other approved procurement methods and shall not be subject to the requirements of this part 8 for that specific solicitation.

(2) The department of personnel shall, within one hundred eighty days after August 5, 2008, establish a process whereby any state agency that intends to solicit bids for a service that is included on the services set aside list created pursuant to section 24-103-804 may solicit bids solely from self-certified vendors.

(3) Any state agency that has awarded a solicitation for services to a self-certified vendor pursuant to paragraph (a) or (b) of subsection (1) of this section shall, before the expiration of the term of the contract, renegotiate a fair and reasonable price for the services with the self-certified vendor that has performed the services for the state agency. The state agency is not permitted to solicit new bids for the services performed by the self-certified vendor unless one of the following occurs:

(a) The nonprofit agency that is the self-certified vendor no longer wishes to perform the services for the state agency;

(b) The state agency decides to perform the services internally and hires employees who will be employees of the state to perform the services;
(c) The state agency no longer needs the service that was provided by the self-certified vendor; or
(d) The self-certified vendor has not met the requirements for the services offered.

(4) Any state agency that is required to solicit bids for a service that is included on the services set aside list is prohibited from bundling the service with one or more other services not included on the services set aside list before soliciting bids from self-certified vendors pursuant to this section. If the state agency has not received a bid from any self-certified vendor and is therefore authorized to procure the services through other approved procurement methods, the bundling prohibition shall no longer apply to the state agency for that specific solicitation for services.

(5) The department of personnel may promulgate rules to implement the requirements of this section pursuant to section 24-102-101. Such rules shall be promulgated in accordance with the provisions of article 4 of this title 24.

(6) Any self-certified vendor that has been awarded a solicitation for services by a state agency pursuant to this part 8 shall report to the chief procurement officer regarding the progress of the award and the contract in a manner and frequency to be determined by the chief procurement officer. The vendor shall include in the report the percentage of the total contract price that it will spend on the salary or wages of the employees hired to perform the services solicitation, not including the salary or wages for administrative staff or employees.

(7) Any self-certified vendor pursuant to this part 8 must maintain the requirements to be a self-certified vendor pursuant to section 24-103-803 (2) for the duration of the services set aside list and for the entire term of any contract resulting from the services set aside list.

R-24-103-805 Bid Process
(a) If a service is not on the services set aside list, the state agency may proceed with another method of source selection as provided in the code.
(b) Prior to obtaining services through a set aside solicitation, the state agency must comply with the same requirements that must be met for services obtained through other methods of source selection as provided in the code and these rules.
(c) A state agency shall send a statement of work describing the needed services to all self-certified vendors who have indicated they can provide the service in the services set aside list.
(d) The self-certified vendors will have a minimum of three business days to respond, unless otherwise extended by the state agency. Responses from self-certified vendors must demonstrate their ability to meet the requirements and include pricing.
(e) Responses from self-certified vendors shall be evaluated and a contract will be awarded based on which acceptable response is most advantageous to the state taking into consideration factors other than price alone.
(f) If no responses from self-certified vendors are received within the designated response time, the state agency may proceed with another method of source selection as provided in the code.
24-103-806. Compliance with state and federal laws.
Any self-certified vendor that is awarded a solicitation for services pursuant to this part 8 is required to comply with state and federal laws regarding employee compensation, employee protections, workers’ compensation, and workplace safety.

24-103-807. Additional requirements. (Repealed)

PART 9 - PROCUREMENT PREFERENCES AND GOALS

24-103-901. Procurement preferences and goals.
The procurement preferences and goals specified in this part 9 apply to the award of contracts under this code.

R-24-103-901 Use of Preferences
The underlying purposes of this code foster effective broad-based competition within the free enterprise system and ensure the fair and equitable treatment of all persons who deal with the procurement system of the state. In furtherance of these purposes, procurement officials and procurement agents are encouraged to maximize opportunities for small businesses, minority-owned businesses, woman-owned businesses, veteran-owned businesses, and businesses that employ people with disabilities to compete for state contracts. No provision is made in the code for preferences or set asides for minority-owned or women-owned businesses.

24-103-902. Low tie bids - award procedure and determination - bid preference.
(1) If low tie bids are received in response to an invitation for bids for a supply contract, the following procedures are required:
   (a) If the low tie bids are from a resident bidder and a nonresident bidder, the resident bidder shall be given preference over the nonresident bidder;
   (b) If the low tie bids are from resident bidders, the procurement agent shall:
      (I) Use a fair and reasonable procedure for determining which bidder receives the contract award that at a minimum provides for the presence, at the time and place the determination is made, of the bidders or the bidders' representatives and an impartial witness designated by the procurement agent who is not an employee of that procurement agent's agency; and
      (II) Give the bidders at least five business days' written notice by certified mail of the date the determination will be made, of the procedure for making the determination, and that the bidders or the bidders' representatives may be present when the determination is made;
   (c) If the low tie bids are only from nonresident bidders, the procurement agent shall follow the procedures in subsections (1)(b)(I) and (1)(b)(II) of this section;
   (d) All other applicable provisions of the code that are not inconsistent with this section shall be followed.
(2) If the procurement agent determines that compliance with this section will cause denial of federal moneys that would otherwise be available or would otherwise be inconsistent with federal law, this section shall be suspended, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with federal law.
24-103-903. State purchases of recycled paper and recycled products - definitions.

(1) When purchasing paper and paper products, any procurement agent shall, whenever the price is competitive and the quality adequate for the purpose intended, purchase recycled paper, as defined in section 13-1-133 (4)(d).

(2) For the fiscal year 1990-91, the executive director shall establish as a goal that at least ten percent of the total volume of paper and paper products purchased by the state shall contain recycled paper. The goal shall increase to twenty percent for the fiscal year 1991-92, to thirty percent for the fiscal year 1992-93, to forty percent for the fiscal year 1993-94, and to fifty percent for the fiscal year 1994-95, and for each fiscal year thereafter.

(3) Each agency using recycled paper may print the notation "printed on recycled stock" on any paper or paper product which has been certified by the division as recycled paper.

(4) For purposes of this section, "paper and paper products" means paper items, including but not limited to paper napkins, towels, corrugated and other cardboard, toilet tissue, high-grade office paper, newsprint, offset paper, bond paper, xerographic bond paper, mimeo paper, and duplicator paper.

(5) When purchasing any product with public funds, any procurement agent shall be authorized to purchase products or materials with recycled content, that have been source-reduced, that are reusable, or that have been composted, unless one or more of the following conditions exist:
   (a) The product is not available within a reasonable period of time;
   (b) The product fails to meet existing purchasing rules, including specifications;
      or
   (c) The product fails to meet federal or state health or safety standards, as set forth in the code of federal regulations or the Colorado code of regulations.

(6) In addition to the requirements set forth in subsections (1), (2), and (5) of this section, the procurement agent shall be authorized to purchase, when cost-efficient and economically feasible, equipment that results in the reduction of paper usage.

24-103-904. Purchasing preference for environmentally preferable products - definitions.

(1) As used in this section, unless the context otherwise requires, "environmentally preferable products" means products that have a lesser or reduced adverse effect on human health and the environment when compared with competing products that serve the same purpose. The product comparison may consider such factors as the availability of any raw materials used in the product being purchased and the availability, use, production, safe operation, maintenance, packaging, distribution, disposal, or recyclability of the product being purchased.

(2) All invitations for bids for products shall include language that describes the availability of the purchasing preference for environmental products. In connection with the purchase of products, a governmental body shall award the contract to a bidder who offers environmentally preferable products subject to the conditions specified in subsection (3) of this section unless the specifications used in the solicitation contain environmentally preferable product criteria. This preference does not apply to the purchase of services, including construction services.

(3) The preference specified in subsection (2) of this section shall apply only if all of the following conditions are met and selecting an environmentally preferable product
would not otherwise be disadvantageous to the state upon consideration of these conditions, singly or in combination:

(a) The quality of the environmentally preferable products meets the specification of the bid.

(b) The environmentally preferable products are suitable for the use required by the purchasing entity.

(c) Any bidder able to offer environmentally preferable products is able to supply such products in sufficient quantity, as indicated in the invitation for bids.

(d) The bid price for environmentally preferable products does not exceed the lowest bid price for products that are not environmentally preferable by more than five percent.

(e) The head of the governmental body or other official charged by law with the duty to purchase products has made a determination that the governmental body is able to purchase the environmentally preferable products out of the governmental body’s existing budget without any further supplemental or additional appropriation.

(4) If the bid price for environmentally preferable products exceeds the bid price for products that are not environmentally preferable by more than five percent, a governmental body may award the contract to a bidder who offers environmentally preferable products where the governmental body demonstrates, on the basis of assessments such as the costs of ownership and a life-cycle analysis, that long-term savings to the state will result from environmentally preferable purchasing in accordance with the requirements of this section. Nothing in this section shall require that a governmental body perform an analysis of the costs of ownership or a life-cycle analysis in connection with the purchase of any products.

(5)

(a) Any bidder that seeks to qualify for the preference created by subsection (2) of this section shall provide documentation to the governmental body inviting the bid that the products offered by the bidder are environmentally preferable. This requirement may be satisfied by submission of any of the following:

(I) A life-cycle analysis conducted on the applicable product that has been conducted in accordance with applicable standards as determined by the purchasing governmental body or by the international organization for standardization or any successor organization;

(II) A reference to an existing environmentally preferable product list maintained by a state or the federal government that contains the product; or

(III) A reference to a nationally recognized third-party certification entity that has certified the product as environmentally preferable on the basis of a valid life-cycle analysis. The governor’s energy office or successor office shall maintain a list of certification entities.

(b) The governmental body may rely in good faith on any form of documentation that satisfies the requirement of subsection (5)(a) of this section.

(c) Notwithstanding any other provision of this section, if none of the forms of documentation specified in subsection (5)(a) of this section apply to the product being purchased, the requirements of this section shall not apply to the purchase of the product.
In connection with any cost of ownership analysis or life-cycle analysis undertaken in connection with any purchase under this section of a product that involves the replacement of existing electrical, natural gas, or steam service, the cost analysis shall consider any stranded utility costs.

R-24-103-904 Definition
“Costs of ownership life cycle analysis” means an accounting of the estimated total cost of ownership, including but not limited to: initial costs; operational costs; longevity; stranded utility costs; and service and disposal costs; along with an assessment of life-cycle environmental; health and energy impacts resulting from new material extraction; transportation; manufacturing; use; and disposal.

24-103-905. Service-disabled veteran-owned small businesses - state procurement preference - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Service-disabled veteran-owned small business" means a business that is:
   (I) Incorporated or organized in the state or that is maintaining a place of business or office in the state; and
   (II) Officially registered and verified as a service-disabled veteran-owned small business by the center for verification and evaluation within the United States department of veterans affairs.

(b) "State agency" means a principal department of the executive branch of state government as specified in section 24-1-110, including any division, office, agency, or other unit created within a principal department, including institutions of higher education and the Colorado commission on higher education; except that "state agency" does not include those entities that have elected to be exempt from the code pursuant to section 24-101-105 (1)(b).

(2) In awarding all contracts that are subject to this code, the state shall have the goal of awarding at least three percent of all such contracts, by dollar value, to service-disabled veteran-owned small businesses. To satisfy this goal, a state agency may grant a preference for service-disabled veteran-owned small businesses.

(3) When a state agency intends to award a contract to a business in furtherance of the three percent goal specified in subsection (2) of this section, the state agency shall, prior to awarding the contract, require the business to submit to the agency documentation from the United States department of veterans affairs that verifies that the business is a service-disabled veteran-owned small business.

(4) On or before September 30, 2015, and on or before September 30 each year thereafter, the executive director shall submit a report regarding the state's progress in satisfying the three percent goal established in this section to the department of military and veterans affairs, the members of the Colorado board of veterans affairs, and to the members of the committees of the house of representatives and the senate that have jurisdiction over state affairs and veterans affairs. The report shall include the following:

(a) The total number of contracts that all state agencies awarded to service-disabled veteran-owned small businesses in the prior fiscal year and the number of such contracts that each state agency awarded;

(b) The total dollar amount of contracts that all state agencies awarded to service-disabled veteran-owned small businesses in the prior fiscal year and
the percentage that such dollar amount bears to the total dollar amount of contracts awarded by all state agencies in the prior fiscal year; and

(c) The total dollar amount of contracts that each state agency awarded to service-disabled veteran owned small businesses in the prior fiscal year and the percentage that such dollar amount bears to the total dollar amount of contracts awarded by the state agency in the prior fiscal year.

24-103-906. Bid preference – state contracts.

(1) Except as provided in subsection (1)(b) of this section and in section 24-103-907, when a contract for commodities or services is to be awarded to a bidder, a resident bidder shall be allowed a preference against a nonresident bidder equal to the preference given or required by the state in which the nonresident bidder is a resident.

(b) Notwithstanding subsection (1)(a) of this section, when an invitation for bids for a contract or the purchase of commodities results in a low tie bid, the provisions of section 24-103-902, apply.

(c) For the purposes of this subsection (1), "commodities" includes supplies as defined in section 24-101-301 (47).

(2) If it is determined by the procurement agent responsible for awarding the bid that compliance with this section may cause denial of federal moneys which would otherwise be available or would otherwise be inconsistent with requirements of federal law, this section shall be suspended, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with federal requirements.

24-103-907. Preference for state agricultural products.

(1) When purchasing agricultural products, a governmental body shall award the contract to a resident bidder who produces products in the state, subject to the conditions in subsection (2) of this section.

(2) The preference in subsection (1) of this section shall apply only if the following conditions are met:

(a) The quality of available products produced in the state is equal to the quality of products produced outside the state;

(b) Available products produced in the state are suitable for the use required by the purchasing entity;

(c) The resident bidder is able to supply products produced in the state in sufficient quantity, as indicated in the invitation for bids; and

(d) The resident bidder's bid or quoted price for products produced in the state does not exceed the lowest bid or price quoted for products produced outside the state or the resident bidder's bid or quoted price reasonably exceeds the lowest bid or price quoted for products produced outside the state.

(II) For purposes of this subsection (2)(d), "reasonably exceeds" shall occur when the head of the governmental body, or other public officer charged by law with the duty to purchase such products, at his or her sole discretion, determines such higher bid to be reasonable and capable of being paid out of that governmental body's existing budget, without any further supplemental or additional appropriation.
(3) (a) For purposes of this section, an agricultural product is produced in the state if it is grown, raised, or processed in the state.

(b) A resident bidder that seeks to qualify for the preference created by subsection (1) of this section shall certify to the governmental body inviting the bid and provide documentation confirming that the resident bidder’s agricultural product was produced in the state. The governmental body may rely in good faith on such certification and documentation.


(1) As used in this section, unless the context otherwise requires, "public project" means:

(a) Any public project as defined in section 24-92-102 (8), including any such project awarded by any county, including any home rule county, municipality, as defined in section 31-1-101 (6), school district, special district, or other political subdivision of the state;

(b) Any publicly funded contract for construction entered into by a governmental body of the executive branch of this state which is subject to this code; and

(c) Any highway or bridge construction, whether undertaken by the department of transportation or by any political subdivision of this state, in which the expenditure of funds may be reasonably expected to exceed fifty thousand dollars.

(2) (a) When a construction contract for a public project is to be awarded to a bidder, a resident bidder shall be allowed a preference against a nonresident bidder from a state or foreign country equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident.

(b) If it is determined by the procurement agent responsible for awarding the bid that compliance with this section may cause denial of federal moneys which would otherwise be available or would otherwise be inconsistent with requirements of federal law, this section shall be suspended, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with federal requirements.

(3) (a) The executive director of the department of personnel, or the executive director's designee, shall use a national registry of bidding preferences published by another state or national organization or shall conduct a survey and compile the results into a list of which states provide a bidding preference on public works contracts for their resident bidders. The list must include details on the type of preference provided by each state, the amount of the preference, and how the preference is applied. The executive director shall complete the initial list on or before July 1, 2014, shall update the list periodically as needed but at least on an annual basis, and shall make the list available to the public on the department's website.

(b) In any bidding process for public works in which a bid is received from a bidder who is not a resident bidder and who is from a state that provides a percentage bidding preference to resident bidders of that state, a comparable percentage disadvantage shall be applied to the bid of that bidder.
(c) Any request for proposals issued by a state agency or political subdivision of the state must include a notice to nonresident bidders that if the nonresident bidder is from a state that provides a bidding preference to bidders from that state, then a comparable percentage disadvantage will be applied to the bid of that nonresident bidder. The notice must also specify that the bidder may obtain additional information from the department of personnel's website.

(d) The executive director of the department of personnel may promulgate rules necessary for the implementation of this section. Such rules shall be promulgated in accordance with the "State Administrative Procedure Act", article 4 of this title 24.

(4) Nothing in this section applies to any project that receives federal moneys. In addition, nothing in this section contravenes any existing treaty, law, agreement, or regulation of the United States. Contracts entered into in accordance with any treaty, law, agreement, or regulation of the United States do not violate this section to the extent of that accord. The requirements of this section are suspended if such requirement would contravene any treaty, law, agreement, or regulation of the United States, or would cause denial of federal moneys or preclude the ability to access federal moneys that would otherwise be available.


(1) When a contract is to be awarded pursuant to this code, a bidder who has used recycled plastics in the manufacture of the commodity or supplies described in the bid shall be allowed a preference of up to five percent for finished products which contain no less than ten percent recycled plastics.

(2) If it is determined by the procurement agent responsible for awarding a bid that compliance with this section may cause denial of federal moneys which would otherwise be available or would otherwise be inconsistent with requirements of federal law, this section shall be suspended, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with federal requirements.


(1) The contractor for any public works project that is funded by a state agency as defined in section 24-30-1301 (17) or by a state institution of higher education as defined in section 24-30-1301 (18), that does not receive any federal moneys, and that costs more than five hundred thousand dollars shall, upon completion of the project, make a good faith effort to disclose to the department of personnel the five most costly goods incorporated into the project, including iron, steel, or related manufactured goods; except that, for public projects under the supervision of the department of transportation, the contractor shall disclose such information to the department of transportation.

(2)

(a) In the case of an iron or steel product, the product will be considered manufactured in the United States if all of the manufacturing processes for the final product take place in the United States.

(b) In the case of a manufactured good, a good will be considered manufactured in the United States if all of the manufacturing processes for the final product take place in the United States irrespective of the origin of the manufactured good's subcomponents.
(c) In order for a manufactured good to be considered subject to disclosure under this article 103, the product must be manufactured predominantly of steel or iron. The manufactured good is deemed a product manufactured predominantly of steel or iron if the product consists of more than fifty percent steel or iron content when it is delivered to the job site for installation.

(3) The disclosure must state the total cost and country of origin of the five most costly goods used on a project, including iron, steel, and related manufactured goods described pursuant to subsections (1) and (2) of this section. The contractor may rely on documents provided by third-party vendors when disclosing the country of origin of iron, steel, or related manufactured goods. In addition, the disclosure must state whether the public works project was subject to any existing domestic content preference, including 41 U.S.C. secs. 8301 to 8305, 23 U.S.C. sec. 313, 49 U.S.C. sec. 5323, 49 U.S.C. sec. 24305, 49 U.S.C. sec. 24405, and 49 U.S.C. secs. 50101 to 50105. The contractor shall disclose the information in a manner to be determined by the department.

(4) The department shall issue an annual report detailing the information that contractors submitted to the department and to the department of transportation pursuant to subsections (1) to (3) of this section. The report must include aggregate data collected for the calendar year and analysis of the data broken down by product and public works project type. The report shall not publicly disclose any proprietary information provided by the contractor that is not subject to disclosure pursuant to the "Colorado Open Records Act", part 2 of article 72 of this title 24. The department shall make the report available to the public on the department's website.

(5) As used in this section, unless the context otherwise requires:
   (a) "Country of origin" shall have the meaning ascribed to it under 19 U.S.C. sec. 1304 and 19 CFR 134.
   (b) "Public works" shall have the same meaning as "public project" as defined in section 24-92-102 (8) (a).
   (c) "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

(6) Nothing in this section applies to any project that receives federal moneys. In addition, nothing in this section contravenes any existing treaty, law, agreement, or regulation of the United States. Contracts entered into in accordance with any treaty, law, agreement, or regulation of the United States do not violate this section to the extent of that accordance. The requirements of this section are suspended if such requirements would contravene any treaty, law, agreement, or regulation of the United States, or would cause denial of federal moneys or preclude the ability to access federal moneys that would otherwise be available.

ARTICLE 103.5. CONTRACT PERFORMANCE

24-103.5-101. Monitoring of vendor performance - definitions. (Repealed)
ARTICLE 104. SPECIFICATIONS

PART 1. DEFINITIONS

24-104-101. Definitions. (Repealed)

PART 2. SPECIFICATIONS

24-104-201. Executive director - rules.
The executive director may promulgate rules governing the preparation, maintenance, and content of specifications for supplies, services, and construction required by the state.

The chief procurement officer shall prepare, issue, revise, maintain, and monitor the use of specifications for supplies, services, and construction required by the state.

R-24-104-202 Brand Name or Equal Specification: Conditions for Use
“Brand name or equal specification” means a specification which uses one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet state requirements, and which allows for the submission of equivalent products. Brand name or equal specifications may be used when it is in the best interest of the state and when the item to be procured is best described by use of such a specification.

R-24-104-202-01 Brand Name Specifications: Conditions for Use
“Brand name specification” means a specification limited to one or more items by manufacturer's names or catalogue numbers. Since use of a brand name specification is restrictive, it may be used when only the brand name or items will satisfy the state's needs. The procurement agent shall seek to identify sources from which the designated brand name or item can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable.

R-24-104-202-02 Qualified Products List: Conditions for Use
“Qualified products list” means an approved list of supplies, services or construction items described by model or catalog numbers, which, prior to competitive solicitation, the state has determined will meet the applicable specification requirements. A qualified products list may be developed with the approval of the procurement official when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary to best satisfy the state's requirements.

24-104-203. Exempted items.
Specifications for supplies, services, or construction items to be procured by purchasing agencies exempted from centralized procurement pursuant to section 24-102-302 may be prepared by those purchasing agencies in accordance with the provisions of this article and rules promulgated pursuant to this article.

24-104-204. Relationship with using agencies.
The chief procurement officer may obtain expert advice and assistance from personnel of using agencies in the development of specifications and may delegate, in writing, to a using agency the authority to prepare and utilize its own specifications.
24-104-205. Maximum practicable competition.
All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the state's needs and shall not be unduly restrictive.

24-104-206. Ownership considerations.
When feasible, specifications shall incorporate the concepts of energy efficiency, value analysis, and life-cycle cost.

24-104-207. Specifications prepared by architects and engineers.
The requirements of this article regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications unless otherwise provided by law.

24-104-208. Purchase of compost by governmental bodies - definitions.
(1) In addition to any other applicable requirement specified in the code, no compost may be purchased by a governmental body unless the compost satisfies minimum standards specified by the department of agriculture.
(2) For purposes of this section, "compost" means a substance derived from a process of biologically degrading organic materials that contains one or more essential available plant nutrients and that complies with minimum standards for the identification of such substance specified by the commissioner of agriculture by rule.
ARTICLE 105. CONSTRUCTION CONTRACTS

PART 1. MANAGEMENT OF CONSTRUCTION CONTRACTING


The executive director may promulgate rules providing for as many alternative methods of construction contracting management as he or she may determine to be feasible. These rules may set forth criteria to be used in determining which method of construction contracting management is to be used for a particular project, grant to the head of a division within the department or the procurement official who is responsible for carrying out the construction project the discretion to select the appropriate method of construction contracting management for a particular project, and require the procurement agent to execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.

R-24-105-101 Selection Methods

The following rules apply to state agencies and state institutions of higher education, as defined in section 24-30-1301(17) and (18), C.R.S., for all methods of source selection for construction unless otherwise exempt in accordance with sections 24-30-1301(15)(b)(II) and (III), C.R.S., or a waiver has been granted by the office of the state architect. Additional methods of source selection in article 103 of these rules may be considered for construction if permitted through delegation and approval of the office of the state architect. However, in the event of a conflict, the rules in article 105 will govern source selection for construction. For methods of source selection for other than construction, see rules implementing article 103 of the code.
R-24-105-101-01 Terminology

(a) The following terms provide a common vocabulary for use in the context of this rule and for general discussion concerning the construction contracting activities of the state. The methods described are not all mutually exclusive and may be combined on one project. In each project these terms may be adapted to fit the circumstances of that project. However, the procurement official should endeavor to ensure that these terms are defined adequately in the appropriate contracts, are not used in a misleading manner, and are understood by all relevant parties. Significant deviations from the terms provided in this rule should be explicitly noted in the contract.

(b) “Prime contractor,” as used in this article means a person who has a contract with the state to build, alter, repair, improve, or demolish any public structure or building, or other public improvements of any kind on any public real property.

(c) The “single prime contractor method” of contracting is typified by one person (general contractor) contracting with the state to timely complete an entire construction project in accordance with plans and specifications provided by the state. Often these plans and specifications are prepared by a private architectural firm under contract to the state. Further, while the general contractor must take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.

(d) In a “design-build or turnkey project,” a contractor contracts directly with the state to meet the state's requirements as described in a set of performance specifications by constructing a facility using the contractor's plans and specifications. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.

(e) “Construction management” is a team approach to construction. A construction manager/general contractor is a person experienced in construction that has the ability to evaluate and implement plans and specifications as they affect time, cost, and quality of construction and to coordinate the design team (consisting of architect/engineers and other consultants as may be required). The construction manager/general contractor contracts directly with sub-contractors for performance of the construction of the project and, administers change orders.

(f) “Phased design and construction” denotes a method in which construction begins when appropriate portions have been designed, but before substantial design of the entire structure has been completed. This method is also known as “fast-track” construction.

The above defined methods of construction contracting are not to be construed as an exclusive list. Consult with the office of the state architect for approval of a construction contracting method other than a single prime contractor. In selecting the appropriate construction contracting method, consideration must be given to all appropriate and effective methods, their comparative advantages and disadvantages and how they might be adapted or combined to fulfill state requirements.
### R-24-105-101-02 Purchasing Thresholds

Purchases of construction services and supplies may be made as follows:

(a) All agencies may procure construction services and supplies up to $25,000 without benefit of competition.

(b) Small purchases procedures may be used to procure services and supplies for construction projects costing less than $150,000.

(c) Invitations for bids or requests for proposals must be used to procure services and supplies for construction projects estimated to exceed the small purchase threshold of $150,000.

### R-24-105-101-03 Solicitation Publication Time

Except as provided under emergency procedures, described in R-24-105-101.6, solicitations shall be published on an electronic procurement system as follows:

(a) Documented quotes, described in rule R-24-105-101.4, shall be published for at least three consecutive business days.

(b) Invitation for bids shall be published for at least 14 consecutive business days. The posting time for an invitation for bids shall not be reduced to a shorter time.

(c) Requests for proposals shall be published for at least 30 consecutive calendar days.

(d) When special requirements or conditions exist, the procurement official may shorten the posting time for a request for proposal, but in no case shall the time period be shortened to reduce competition. The procurement official shall document the reason a reduced time period was necessary in the procurement record.

(e) When special requirements or conditions exist, the procurement official may lengthen the posting time.
R-24-105-101-04 General Bidding Provisions
(a) For purposes of the rules under article 105 of the code, use of the term “bid”, “bids”, “proposal” and “proposals” are interchangeable based on the solicitation method.
(b) After opening bids or proposals, the procurement official may request low bidders to extend the time during which the state may accept their bids or proposals, provided that no other change is permitted. The reasons for requesting such extension shall be documented in the procurement record.
(c) If only one responsive bid or proposal is received in response to a solicitation, an award may be made to the single bidder if the procurement official finds that the price submitted is fair and reasonable and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for re-solicitation. In the event that all bids for a construction project exceed available funds, as certified by the appropriate fiscal officer, the procurement official is authorized in accordance with section 24-103-202(7), C.R.S., in situations where time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsible bidder in order to bring the bid within the amount of available funds; except that the functional specifications integral to completion of the project may not be reduced in scope, taking into account the project plan, design, and specifications and quality of materials. Otherwise, the bid must be rejected and:
   (i) new bids may be solicited; or
   (ii) the proposed procurement may be cancelled; or
   (iii) if the procurement official determines in writing that the need for the construction continues but that the price of the one bid or proposal is not fair and reasonable and there is no time for re-solicitation or re-solicitation would likely be futile, the procurement may then be conducted as a sole source procurement under rule R-24-105-101.5 or an emergency procurement under rule R-24-105-101.6, as appropriate.
(d) An alternate bid or proposal means an offer or response submitted in response to a solicitation issued by the state that is in essential compliance with the solicitation terms and conditions but offers an alternate that does not significantly deviate from the required specifications contained in the solicitation. The procurement official would be responsible for determining whether an alternate bid or proposal is acceptable.
(e) A solicitation may prohibit multiple or alternate bids or proposals. When prohibited the multiple or alternate bids or proposals shall be rejected although a clearly identified base bid or proposal will be considered for award as though it were the only bid or proposal submitted by the bidder or offeror. A solicitation shall specify if multiple or alternate bids or proposals will be allowed and how they will be treated.
(f) Any bid or proposal which is conditioned upon receiving an award under both the particular solicitation for which the bid or proposal is made and another state solicitation shall be deemed nonresponsive and unacceptable.
(g) Affiliates are prohibited from submitting bids for the same contract. An “affiliate” of a bidder or offeror is any person directly or indirectly:
   (i) controlling;
   (ii) controlled by; or
(iii) under common control with the bidder or offeror.

(h) The procurement official may determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any contract for construction.

(i) All construction bidding and contracting procedures shall utilize standard state forms, which are available on-line from the website of the office of the state architect. Any changes or modifications of the state forms, including general conditions of the contract, shall not be valid unless issued in the form of supplementary general conditions and approved by the office of the state architect.

(j) Invitations for bids or invitation for best value bids may be used for public projects that have no federal funding involved, pursuant to sections 24-92-103 and 24-92-103.5, C.R.S.
R-24-105-101-05 Content of Solicitations

(a) The notice of the invitation for bids or request for proposals shall include the following information and statements:

(i) date, time and location of the bid opening;
(ii) project number, name and location;
(iii) project time of completion;
(iv) location where bidding documents may be obtained;
(v) deposit required, if any, for a complete set of contract documents;
(vi) preference shall be given to Colorado resident bidders and for Colorado labor as provided by law;
(vii) when the use of federal funds is involved, the rate of wages to be paid for all laborers and mechanics shall be in accordance with the applicable Davis-Bacon rates of wages for the project. Such rates will be specified in the general contract documents.

(b) Solicitations may incorporate documents by reference, provided, that the solicitation specifies where such documents can be obtained.

(c) The solicitation response shall require the acknowledgment of the receipt by the bidder or offeror of all addenda issued to the solicitation.

(d) Bidding time is the period of time between the date of the advertisement for bids and the date set for opening of bids. In each case, the bidding time shall provide bidders a reasonable time to prepare their bids.

(e) Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders. The conference shall be held long enough after the solicitation has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the solicitation unless a change is made by written addendum as provided elsewhere in these rules and the solicitation and the notice of the pre-bid conference shall so provide.

R-24-105-101-06 Public Notice

Notice of the solicitation shall be advertised in accordance with the provisions of sections 24-70-101 through 24-70-107, C.R.S., and these rules. The notice will be advertised as described in the solicitation or in an electronic medium approved by the executive director pursuant to section 24-92-103(3), C.R.S. Publication of the notice shall occur twice, one week apart. Nothing in these rules shall prevent the procurement official from advertising or otherwise giving public notice in additional media and locations.
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| **R-24-105-101-07 Addenda and Clarifications** | (a) If addenda or clarifications result in any material changes to the scope of work or otherwise affect the manner or form of response, the procurement official or his or her designee must notify all known potential bidders.  
(b) Addenda to solicitations shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued in the bidder’s response. Each addendum shall reference the portions of the solicitation it amends.  
(c) Addenda shall be posted on an electronic procurement system with sufficient time to allow prospective bidders or offerors to consider them in preparing their bids or proposals. If the time set for bid or proposal opening will not permit such preparation, such time shall be increased in the addendum.  
(d) Refer to rule R-24-103-201-14, regarding discussions with bidders or offerors. |
| **R-24-105-101-08 Form of Submissions** | (a) Bidders and offerors must execute and submit bids and proposals on the form prescribed by the office of the state architect, and as specified by the solicitation. A bid or proposal received on any other form will be unresponsive.  
(b) Electronic bids or proposals shall be in accordance with rule R-24-103-201-11. |
| **R-24-105-101-09 Mistakes in Bids or Proposals** | When it appears from a review of the bid or proposal that a mistake has been made, the procurement official should request that the bidder or offeror confirm the bid or proposal and shall take such further action as may be required in rule R-24-103-201-08. |
| **R-24-105-101-10 Withdrawal of Bids or Proposals** | Any bid or proposal may be modified or withdrawn by written notice to the appropriate purchasing agency prior to the specified bid opening date and time as described in rule R-24-103-201-09. |
| **R-24-105-101-11 Timeliness of Bids or Proposals** | Bids or proposals received after the bid or proposal opening time shall not be opened, and shall be rejected as a late response. Exceptions may be permitted by the procurement official pursuant to rule R-24-103-201-10. |
| **R-24-105-101-12 Alternate Bids** | Alternate bids shall be governed by rule R-24-103-201-12. |
R-24-105-101-13 Opening and Recording of Bids and Proposals
(a) Upon receipt, all bids and proposals shall be recorded to reflect the date and time they were received by the purchasing agency, but shall not be opened.
(b) Bids and proposals shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the solicitation. A register of bids and proposals shall be prepared which shall include the name of each bidder or offeror that responded.
(c) The procurement agent shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing in accordance with rules R-24-101-401-01 through R-24-101-401-05.
(d) Documented quotes, described in rule R-24-103-204-01, do not require a public opening and may be opened upon receipt. However, a register of responses shall be prepared.

R-24-105-101-14 Bid and Proposal Evaluation and Award
(a) The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids or request for proposals. The invitation for bids or request for proposals shall set forth the requirements and criteria which will be used to determine the acceptability of a response.
(b) Bids and proposals will be evaluated to determine which bidder or offeror offers the lowest cost to the state in accordance with the evaluation criteria set forth in the invitation for bids and request for proposals. Only objectively measurable criteria set forth in the invitation for bids or request for proposals shall be applied in determining the lowest bidder.
(c) Evaluation criteria need not be precise predictors of actual future cost, but to the extent possible such evaluation criteria shall:
   (i) provide reasonable estimates based upon information the state has available concerning future use; and
   (ii) treat all bids equitably.
(d) A contract may not be awarded to a bidder submitting a higher quality item than that designated in the invitation for bids or request for proposals, unless such bidder is also the lowest bidder as determined by value analysis or life-cycle cost formulas as permitted in this rule.

R-24-105-101-15 Forms
All construction contracts and procedural documents shall be executed on standard state of Colorado forms available on-line on the office of the state architect website.
<table>
<thead>
<tr>
<th>Rule Number</th>
<th>Section Title</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>R-24-105-101-16</td>
<td>Use of Electronic Procurement Systems - Notice of Construction Projects and Professional Services</td>
<td>For all construction projects and for all procurements for professional services (as defined in section 24-30-1402(6), C.R.S.) for which competitive notification or solicitation procedures are required, a notification must be placed on an electronic procurement system, and the award must be posted on the same electronic procurement system. (a) Detailed specifications need not be included in the notice, but all information must be open to public view, without password protection. (b) Contractors and bidders need not be registered for an electronic procurement system in order to be deemed responsive.</td>
</tr>
<tr>
<td>R-24-105-101.2-01</td>
<td>Multi-Step Invitation for Bids</td>
<td>A contract may be entered into by multi-step invitation for bids. Unless otherwise specified, the general rules under rule R-24-103-202-03 shall apply to multi-step invitation for bids. (a) The multi-step invitation for bid method will be used when it is not practical to initially prepare a definitive scope of work which will be suitable to permit an award based on price. Utilization of this method requires prior approval from the office of the state architect. (b) The procedure for multi-step invitation for bid will be set forth in office of the state architect policies.</td>
</tr>
<tr>
<td>R-24-105-101.3-01</td>
<td>Invitation for Best Value Bids</td>
<td>The use of invitation for best value bids shall follow the requirements in accordance with rule R-24-103-202.3 and section 24-92-103.5, C.R.S., for construction projects.</td>
</tr>
<tr>
<td>R-24-105-101.3-02</td>
<td>Disclosure</td>
<td>An agency choosing between methods of invitation for bids or invitation for best value bids shall disclose the rationale behind its decision in accordance with section 24-92-103.7, C.R.S.</td>
</tr>
<tr>
<td>R-24-105-101.3-03</td>
<td>Evaluation</td>
<td>The criteria for evaluating invitations for best value bids shall be those in section 24-92-103.5(3), C.R.S.</td>
</tr>
</tbody>
</table>
R-24-105-101.4 Documented Quotes

(a) Services and supplies for construction projects between $25,000 and $150,000 may be purchased using a documented quote process.

(b) The contractor’s response constitutes an offer and is binding if accepted by the state.

(c) The contractor’s response must be on their letterhead or in a format approved by the state.

(d) The award must be made to the low acceptable quote.

(e) Requests for documented quotes must be placed on an electronic procurement system in accordance with these rules. Solicitations must remain posted for at least three business days unless the director or head of a purchasing agency determines in writing that a lesser time is required in order to meet an immediate state need.

(f) The procurement official or his or her designee may negotiate with any vendor or contractor to clarify its quote or to effect modifications that will make the quote acceptable (including curing a defective bid bond) or make the quote more advantageous to the state. However, in the negotiation process, the terms of one vendor’s quote shall not be revealed to a competing vendor, and quotes shall be kept confidential until a commitment voucher is issued.

(g) State agencies and state institutions of higher education, with the approval of the office of the state architect, may utilize a standing order process for projects less than $150,000. An approved process must include open public solicitation (including advertising on an electronic procurement system) for eligible contractors at least once per year, a process for obtaining at least three quotes before awarding a contract to an eligible contractor, and an equitable process for determining which contractors will be given an opportunity to provide quotes.

(h) Bonding and retainage requirements set forth in section 38-26-106, C.R.S., section 24-105-201, et seq., C.R.S., and section 24-91-103(1), C.R.S., and rules promulgated thereunder are not affected by this rule. Failure to provide a required bid bond, if not cured, makes the quote unacceptable. State agencies and state institutions of higher education should seek legal advice when bid bonds have been required and the terms of the quote are modified after receipt.
### R-24-105-101.5 Sole Source Procurements

Contracts for capital construction or controlled maintenance may be awarded by use of a sole source procurement only after consulting with the office of the state architect and only if the following conditions are met:

(a) A sole source procurement is justified when there is only one service that can reasonably meet the need and there is only one vendor who can provide the service.

(b) The procurement official or his or her designee shall make a written determination that a procurement is sole source, setting forth the reasons in the procurement record. For purposes of this rule, the procurement official is delegated in accordance with section 24-102-302(2), C.R.S.

(c) In cases of reasonable doubt, competition should be solicited. Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

(d) When a sole source procurement is authorized, the procurement official or his or her designee shall conduct negotiations, as appropriate, as to price, delivery, and terms.

(e) When applicable, the procurement official or his or designee shall publish a notice of the sole source on an electronic procurement system for not less than three business days in accordance with section 24-106-103(5), C.R.S.

### R-24-105-101.6 Emergency Procurements

Contracts may be awarded by use of an emergency procurement.

### R-24-105-101.6-01 Definition of Emergency Conditions

An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as may be identified by the using agency and approved by the chief procurement officer, the procurement official, or a designee of either officer. The existence of such condition creates an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten:

(a) The functioning of state government, or its programs;

(b) The preservation or protection of property; or

(c) The health or safety of any person or persons.

### R-24-105-101.6-02 Scope of Emergency Procurements

Emergency procurements shall be limited to supplies, services, or construction items in such quantities as are necessary to meet the emergency.
R-24-105-101.6-03 Authority to Make Emergency Procurements

(a) Any governmental body may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods, provided, that whenever practical, approval by the chief procurement officer, the procurement official, or a designee of either officer, shall be obtained prior to the procurement. For purposes of this rule, procurement official is delegated in accordance with section 24-102-302(2), C.R.S.

(b) If emergency controlled maintenance funding is to be requested by the governmental body, the office of the state architect shall be notified no later than the next business day.

(c) In the event an emergency arises after normal business hours, the governmental body shall notify the chief procurement officer, the procurement official, or a designee of either officer, and the office of the state architect no later than the next business day.

24-105-102. Performance evaluation reports – definitions. (Repealed)

PART 2. BONDS

24-105-201. Bid security.

(1) Bid security shall be required for all invitations for bids for construction contracts when the price is estimated by the procurement agent to exceed fifty thousand dollars. Bid security shall be a bond provided by a surety company authorized to do business in this state, the equivalent in cash, or otherwise supplied in a form satisfactory to the state. Nothing in this subsection (1) prevents the requirement of such bonds on construction contracts under fifty thousand dollars.

(2) Bid security shall be in an amount equal to at least five percent of the amount of the bid.

(3) When the invitation for bids requires security, noncompliance requires that the bid be rejected as nonresponsive.

(4) After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, except as provided in section 24-103-202(6). If a bidder is permitted to withdraw his bid before award, no action shall be had against the bidder or the bid security.

R-24-105-201 Acceptable Bid Security

Bid security is submitted as a guarantee that the bid or proposal will be maintained in full force and effect for a period of thirty (30) days after the opening of the bids or proposals or as specified in the solicitations. Acceptable bid security shall be limited to:

(a) A one-time bid bond underwritten by a company licensed to issue bid bonds in the state of Colorado, and in the form prescribed in section 24-105-203, C.R.S.; or

(b) A bank cashier’s check made payable to the treasurer of the state of Colorado; or

(c) A bank certified check made payable to the treasurer of the state of Colorado.


(1) When a construction contract is awarded in excess of one hundred fifty thousand dollars, the following bonds or security shall be delivered to the state and shall become binding on the parties upon the execution of the contract:
(a) A performance bond satisfactory to the state, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the state, in an amount equal to fifty percent of the price specified in the contract; and

(b) A payment bond satisfactory to the state, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the state, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to fifty percent of the price specified in the contract.

(2) Nothing in this section shall be construed to limit the authority of the state to require a performance bond or other security in addition to those bonds or in circumstances other than those specified in subsection (1) of this section.

(3) Suits on payment bonds and labor and payment bonds shall be brought in accordance with sections 38-26-105 to 38-26-107, C.R.S.

R-24-105-202 Exceptions
If it is deemed to be in the state's best interest, the procurement official may require, as provided in section 24-105-202(2), C.R.S., a performance bond or other security in addition to those bonds or in circumstances other than those specified in section 24-105-202(a), (b), C.R.S., as amended.

24-105-203. Bond forms and copies.
(1) The form of bonds required by this part 2 shall be as provided in sections 38-26-105 to 38-26-107, C.R.S.

(2) Any person may request and obtain from the state a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

R-24-105-203 Bond Forms and Copies
All construction contracts and procedural documents shall be executed on standard state of Colorado forms available on the office of the state architect website.

PART 3. CONSTRUCTION CONTRACT CLAUSES AND FISCAL RESPONSIBILITY

24-105-301. Contract clauses and their administration.
(1) The executive director may promulgate rules requiring the inclusion in state construction contracts of clauses providing for adjustments in prices, time of performance, and other appropriate contract provisions affected by and covering the following subjects:

(a) The unilateral right of the state to order in writing changes in the work within the scope of the contract and changes in the time of performance of the contract that do not alter the scope of the contract work;

(b) Variations occurring between estimated quantities of work on a contract and actual quantities;

(c) Suspension of work ordered by the state; and

(d) Site conditions differing from those indicated in the contract or ordinarily encountered; except that differing site condition clauses required by the rules
need not be included in a contract when the contract is negotiated or when the contractor provides the site or design.

(2)  
(a)  Adjustments in price shall be computed in one or more of the following ways:
   (I)  By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
   (II)  By unit prices specified in the contract or subsequently agreed upon;
   (III)  By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
   (IV)  In such other manner as the contracting parties may mutually agree; or
   (V)  In the absence of agreement by the parties, by a unilateral determination by the state of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the state pursuant to the applicable sections of any rules issued under section 24-106-108, and subject to the provisions of article 109 of this title 24.

(b)  A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of section 24-103-403.

(3)  The executive director shall promulgate rules requiring the inclusion in state construction contracts of clauses providing for appropriate remedies and covering the following subjects:
   (a)  Liquidated damages as appropriate;
   (b)  Specified excuses for delay or nonperformance;
   (c)  Termination of the contract for default; and
   (d)  Termination of the contract in whole or in part for the convenience of the state.

(4)  The contract clauses promulgated under this section may be set forth in rules; except that such rules shall be consistent with section 24-91-103.5 (1) and (2) and section 24-30-1303 (1)(s)(IV).

24-105-302. Fiscal responsibility.
Every contract modification or contract price adjustment under a construction contract with the state in excess of an amount specified in the contract shall be subject to prior written certification by the controller or other official responsible for monitoring and reporting upon the status of the costs of the total project or contract budget as to the effect of the contract modification or adjustment in contract price on the total project or contract budget. In the event that the certification of the controller or other responsible official discloses a resulting increase in the total project or contract budget, the procurement agent shall not execute or make such contract modification or adjustment in contract price unless sufficient funds are available therefor or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project or contract budget as it existed prior to the contract modification or adjustment in contract price under consideration; except that, with respect to the validity of any executed contract modification or adjustment in contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this section.
ARTICLE 106. MODIFICATION AND TERMINATION OF CONTRACTS


(1) The executive director may promulgate rules permitting or requiring the inclusion of clauses providing for adjustments in prices, time of performance, or other appropriate clauses covering the following:
   (a) The unilateral right of the state to order, in writing, changes in the work within the scope of the contract and temporary stopping of work or delaying of performance; and
   (b) Variations occurring between estimated quantities of work in a contract and actual quantities.

(2) Adjustments in price pursuant to clauses promulgated under subsection (1) of this section shall be computed in one or more of the following ways:
   (a) Adjustments in price pursuant to clauses promulgated under subsection (1) of this section shall be computed in one or more of the following ways:
      (I) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
      (II) By unit prices specified in the contract or subsequently agreed upon;
      (III) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
      (IV) In such other manner as the contracting parties may mutually agree; or
      (V) In the absence of agreement by the parties, by a unilateral determination by the state of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the state in accordance with applicable sections of the rules promulgated under article 107 of this title and subject to the provisions of article 109 of this title.
   (b) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of section 24-103-403.

(3) The executive director may promulgate rules including, but not limited to, rules permitting or requiring the inclusion in state contracts of clauses providing for appropriate remedies and covering the following subjects:
   (a) Liquidated damages as appropriate;
   (b) Specified excuses for delay or nonperformance;
   (c) Termination of the contract for default; and
   (d) Termination of the contract in whole or in part for the public interest of the state.

(4) Any contract clauses promulgated under this section may be set forth in rules; except that such rules shall be consistent with section 24-91-103.5 (1) and (2). However, the executive director or the procurement official may vary the clauses for inclusion in any particular state contract so long as any variations are supported by a written determination that describes the circumstances justifying such variations and notice of any material variation is stated in the invitation for bids or request for proposals. No variation that is inconsistent with section 24-91-103.5 (1) and (2) shall be made pursuant to this subsection (4).
24-106-102. Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this code, the principles of law and equity, including the "Uniform Commercial Code", the law merchant, and any law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this code.

24-106-103. Centralized contract management system - personal services contracts - legislative declaration - definitions.

(1) The general assembly hereby finds and declares that by enacting this section the general assembly intends to centralize the location of information about personal services contracts and provide for legislative, executive, and public access to all personal services contracts entered into by any governmental body.

(b) For purposes of this section, "governmental body" shall have the same meaning as set forth in section 24-101-301 (18); except that, for purposes of this section, "governmental body" shall also include elected officials.

(2) This section shall apply to any personal services contract to which the state is a party the value of which exceeds one hundred thousand dollars with the exception of any contract to which the state is a party under medicare, the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5, the "Children's Basic Health Plan Act", article 8 of title 25.5, or the "Colorado Indigent Care Program", part 1 of article 3 of title 25.5.

(3) On or before June 30, 2009, the department shall implement and maintain a centralized contract management system for the purpose of monitoring all personal services contracts entered into by a governmental body that are subject to the requirements of this section. With respect to each contract entered into by a governmental body, information contained in the system shall include, without limitation, the following:

(I) The governmental body that entered into the personal services contract;

(II) The persons or entities with which the governmental body is contracting;

(III) The purpose of the personal services contract;

(IV) The effective dates, expiration dates, and any renewal periods of the personal services contract;

(V) The vendor selection method upon which the personal services contract was awarded, whether competitively procured, awarded on a sole-source basis, or otherwise. Where the contract has been awarded on a sole-source basis, the governmental body shall certify that the governmental body has followed the requirements of subsection (5) of this section.

(VI) The total amount of the personal services contract and any amendments to the contract;

(VII) Whether any services under the personal services contract, or any subcontracts to the contract that directly relate to the services provided under the contract, are anticipated to be performed outside the United States or the state as disclosed in the statement of work.
pursuant to section 24-102-206 and the vendor's justification for obtaining services outside the United States or the state in accordance with the requirements of section 24-102-206; and

(VIII) Upon completion of the personal services contract, the extent as disclosed by the vendor to which any services under the contract, or any subcontracts to the contract that directly relate to the services provided under the contract, were performed outside the United States or the state.

(b) Each governmental body shall be responsible for gathering relevant information for inclusion in the centralized contract management system in accordance with the requirements of subsection (3)(a) of this section.

(c) The centralized contract management system required to be maintained by the department pursuant to subsection (3)(a) of this section shall be a publicly available database of all personal services contracts entered into by any governmental body, accessible from the website maintained by the state. Information concerning contracts contained in the database and accessible on the website shall be searchable by criteria enumerated in subparagraphs (I) to (VIII) of subsection (3)(a) of this section. Information in the database shall be either presented in plain and nontechnical language or by means of key terms that are clearly and easily defined.

(d) Any new personal services contracts subject to the requirements of this section shall be added to the centralized contract management system maintained by the department pursuant to subsection (3)(a) of this section not more than thirty days after the execution of the contract.

(4) The centralized contract management system required to be maintained by the department pursuant to subsection (3)(a) of this section shall include information concerning personal services expenditures by the governmental body and types of services. The types of services that may be designated shall include, without limitation, professional technical, nonprofessional support, purchased services, architectural, engineering and construction trades, and professional equipment repair.

(5) Prior to entering into a sole-source personal services contract, the governmental body shall attempt to identify competing vendors by placing a notice on the state's electronic procurement system for not less than three business days. If the governmental body receives any responses to the notice from qualified and responsible vendors that are able to meet the specifications identified in the notice and that are not otherwise prohibited from bidding on the contract, the sole-source selection method shall not be used.

24-106-104. Types of contracts.

Subject to the limitations of this section, any type of contract which will promote the best interests of the state may be used; except that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A contingency-based contract may be used only upon approval by the governor's office of state planning and budgeting pursuant to section 24-17-204. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the state than any other type of contract or that it is impracticable to obtain the supplies, services, or construction required unless the cost-reimbursement contract is used.
R-24-106-104 Cost-Plus-a-Percentage-of-Cost
A cost-plus-a-percentage-of-cost contract is a contract in which the vendor is paid for allowable costs plus a percentage of the allowable costs as profit and the costs are unknown. Cost-plus-a-percentage-of-cost does not include purchases where the cost is known at the time the obligation is incurred, regardless of how the vendor determines those costs.

24-106-105. Multiyear contracts.

(1) Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the state if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and if funds are available for the first year at the time of contracting. If the chief procurement officer determines that extenuating circumstances exist and an extension of the contract beyond the term included in the solicitation is in the best interest of the governmental body, then the chief procurement officer may approve a longer term for a reasonable time based on what is practicable and necessary given the circumstances. The state shall initiate the renewal or extension of a contract for supplies or services. Payment and performance obligations for succeeding fiscal years shall be subject to the availability and appropriation of funds therefor.

(2) Prior to the utilization of a multiyear contract, it shall be determined in writing:
   (a) That estimated requirements cover the period of the contract and are reasonably firm and continuing; and
   (b) That such a contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be cancelled, and the contractor may be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

R-24-106-105-01 Definition
“Multiyear contract” means a contract for the purchase of supplies or services with a performance period of more than twelve months at the time of its initial execution. A contract with a performance period of twelve or fewer months with subsequent renewal options on the part of the state of no more than one year does not constitute a multiyear contract. Written approval by the procurement official or his or her designee is required prior to entering into a multiyear contract.

R-24-106-105-02 Pre Contract
Contracts, including multiyear contracts, for periods in excess of five years, including the initial term and all extensions, shall only be executed with written permission from the chief procurement officer. Where applicable, the maximum approved term must be included in the method of source selection.
**R-24-106-105-03 Post Contract**

Requests for extensions of contracts, including multiyear contracts, for periods in excess of the term included in the original method of source selection, as described in article 103 of the code, shall be submitted to the chief procurement officer for approval. The chief procurement officer will determine if extenuating circumstances support an extension of the contract.

**R-24-106-105-04 Short Term Extensions**

End of contract extensions, also known as a holdover of a contract, allow for a short-term extension of a contract at the end of its current term. In contracts where an end of contract extension is permitted, exercising this extension does not require written permission from the chief procurement officer.

**R-24-106-105-05 Conditions for Extensions and Pricing**

Any contract with allowable extensions shall contain conditions for exercising the extensions. Methods used to determine price escalation or de-escalation shall be part of the original method of source selection and made a part of the resulting contract.

**24-106-106. Right to audit records.**

The state shall be entitled to audit the books and records of any contractor or subcontractor under any negotiated contract or subcontract to the extent that the books and records relate to the performance of a state contract or subcontract, if the state is able, in conducting any such audit, to maintain the confidentiality of any information contained in the books and records that is deemed proprietary as determined by the state. Such books and records shall be maintained by the contractor for a period of six years after the date of final payment under the prime contract and by the subcontractor for a period of six years after the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

**24-106-107. Monitoring of vendor performance - definitions.**

(1) For purposes of this section, "governmental body" has the same meaning as set forth in section 24-101-301 (18); except that, for purposes of this section, "governmental body" shall also include elected officials.

(2) Each personal services contract entered into pursuant to this code with a value of one hundred thousand dollars or more shall contain:

   (a) Performance measures and standards developed specifically for the contract by the governmental body administering the contract. The performance measures and standards shall be negotiated by the governmental body and the vendor prior to execution of the contract and shall be incorporated into the contract. The measures and standards shall be used by the governmental body to evaluate the performance of the vendor under the contract.

   (b) An accountability section that requires the vendor to report regularly on achievement of the performance measures and standards specified in the contract and that allows the governmental body to withhold payment until successful completion of all or part of the contract and the achievement of established performance standards. The accountability section shall include a requirement that payment by the governmental body to the vendor shall be made without delay upon successful completion of all or any part of the
contract in accordance with the payment schedule specified in the contract or as otherwise agreed upon by the parties.

(c) Monitoring requirements that specify how the governmental body will evaluate the vendor’s performance, including progress reports, site visits, inspections, and reviews of performance data. The governmental body shall use one or more monitoring processes to ensure that the results, objectives, and obligations of the contract are met.

(d) Methods and mechanisms to resolve any situation in which the governmental body's monitoring assessment determines noncompliance, including termination of the contract.

(3) Each governmental body administering the personal services contract shall, within existing resources of the governmental body, designate a contract manager with subject matter expertise within the governmental body responsible for day-to-day management of the contract, including performance monitoring.

(4) If the governmental body determines that the vendor has not complied with the contract terms, including but not limited to performance standards and measurable outcomes, the state may pursue remedies in accordance with article 109 of this title 24 and shall be entitled to any remedy available under law in the case of contract nonperformance, including but not limited to termination of the contract and the return of any and all payments made to the vendor by the state under the contract; except that the recovery of any moneys by the state shall be reduced by the value of any contractual benefits realized by the state from partial performance by the vendor under the contract. If a vendor is deemed to be in default under any one particular contract with the state, the state may, upon a showing of good cause, declare any or all other contracts it has entered into with the vendor to be in default.

(5) Notwithstanding any other provision of this section, nothing in this section shall be construed to apply to any contract to which the state is a party under medicare, the "Colorado Medical Assistance Act", articles 4 to 6 of title 25.5, the "Children's Basic Health Plan Act", article 8 of title 25.5, or the "Colorado Indigent Care Program", part 1 of article 3 of title 25.5.


The executive director may promulgate rules setting forth cost principles which may be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs.

24-106-109. Terms and conditions in contracts.

Any term or condition in any contract entered into by the state that requires the state to indemnify or hold harmless another person, except as otherwise authorized by law, or by which the state agrees to binding arbitration or any other binding extra-judicial dispute resolution process in which the final resolution is not determined by the state, or by which the state agrees to limit liability of another person for bodily injury, death, or damage to tangible property of the state caused by the negligence or willful misconduct of such person or such person’s employees or agents shall be void ab initio; except that the contract containing that term or condition shall otherwise be enforceable as if it did not contain such term or condition. All contracts entered into by the state, except for contracts with another government, shall be governed by Colorado law notwithstanding any term or condition to the contrary.
R-24-106-109 Terms and Conditions in Contracts
Section 24-106-109, C.R.S., applies to all contracts entered into by the state.
ARTICLE 107. COST PRINCIPLES
24-107-101. Administrative rules - cost reimbursement. (Repealed)

ARTICLE 108. SUPPLY MANAGEMENT
24-108-101 to 24-108-401. (Repealed)
ARTICLE 109. REMEDIES

PART 1. PRELITIGATION RESOLUTION OF CONTROVERSIES

As used in this article 109, unless the context otherwise requires:

(1) "Aggrieved party" means any actual or prospective bidder, offeror, or contractor who believes that he or she has suffered a denial of legal rights under this code in connection with the solicitation or award of a contract. For purposes of contract controversies, an aggrieved party may also be the contractor.

(2) "Material issue" means a nontrivial defect in the solicitation or award that would prejudice the outcome of the procurement. The presence of multiple nonmaterial issues in a solicitation or award does not constitute a material issue unless the aggrieved party can establish that those nonmaterial issues together would prejudice the outcome of the procurement.

24-109-101.5 Resolution of controversies.

(1) The procurement official or his or her designee is authorized to settle and resolve any questions regarding:
   (a) Any protest concerning the solicitation or award of a contract;
   (b) Debarment or suspension from consideration for award of contracts; and
   (c) Any controversy arising between the state and a contractor by virtue of a contract between them, including, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or any other cause for contract modification or rescission.

(2) Any decision of the procurement official or his or her designee with respect to a material issue raised in a protest is subject to appeal pursuant to part 2 of this article 109.

(3) Except for appeals referred to the office of administrative courts pursuant to section 24-109-201, the provisions of section 24-4-105 shall not apply to the administrative procedures established pursuant to this article 109.


(1) Any aggrieved party in connection with the solicitation or award of a contract may protest to the procurement official or his or her designee. The protest of an invitation for bids or a request for proposals shall be submitted in writing to the procurement official or his or her designee within ten business days after such aggrieved party knows or should have known of the facts giving rise thereto. The protest of a small purchase solicitation or award of contract shall be submitted in writing to the procurement official or his or her designee within three business days, unless the procurement official otherwise extends the time period to ten business days, after such aggrieved party knows or should have known of the facts giving rise thereto.

(2) The procurement official or his or her designee shall have the authority to settle and resolve a protest of an aggrieved party concerning the solicitation or award of a contract. A written decision regarding the protest shall be rendered within ten business days after the protest is filed. The decision shall be based on and limited to a review of the material issues raised by the aggrieved party and shall set forth each factor taken into account in reaching the decision. This authority shall be exercised pursuant to rules promulgated by the executive director to provide for the
expeditious resolution of the protest. Remedies awarded pursuant to this decision, if any, shall be limited to those set forth in part 5 of this article 109.

(3) If the procurement official or his or her designee does not issue a written decision regarding a solicitation or award within the period specified in this article 109 or within such longer period as may be agreed upon by the procurement official and the aggrieved party, then the aggrieved party may proceed as if the procurement official or his or her designee had rendered an adverse decision.

R-24-109-102-01 Filing of Protest
(a) An aggrieved party may file a written protest at any phase of solicitation or award concerning a material issue(s), including but not limited to specifications, award, or disclosure of information marked confidential in the bid or proposal.
(b) The written protest shall include, at a minimum, the following:
   (i) name and address of the aggrieved party;
   (ii) appropriate identification of the procurement by solicitation or award number;
   (iii) a statement of the material issue(s) giving rise to the protest; and
   (iv) any available exhibits, evidence, or documents substantiating the protest.
(c) A written protest shall be submitted to the procurement official by mail, hand delivery, electronic submission or other means as approved by the state.
(d) A written protest must be received by the procurement official by the deadline set forth in section 24-109-102, C.R.S., and rule R-24-109-108.
(e) If an action concerning the protest has been commenced in district court, the procurement official shall not act on the protest but shall refer it to the attorney general.

R-24-109-102-02 Requested Information
Any additional information regarding the protest should be submitted within the time period requested by the procurement official in order to expedite resolution of the protest. If any party fails to comply expeditiously with any request for additional information by the procurement official, the protest may be resolved without such information.

R-24-109-102-03 Decision
The written decision issued by the procurement official shall inform the aggrieved party of his or her right to appeal administratively or judicially in accordance with article 109 of the code.

A contract resulting from a request for proposals is not awarded until any protest made in connection with the request for proposals has been resolved pursuant to section 24-109-102 (2).

24-109-104. Entitlement to costs. (Repealed)

24-109-105. Debarment and suspension.
(1)
(a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the procurement official or his or her designee, after consultation with the using agency and the attorney general, shall have authority to debar a person for any of the reasons set forth in subsection (2) of this section from consideration for award of contracts. The debarment shall not be for a period of more than three years; except that, if a person is convicted of a crime specified in subsection (2) of this section, the length of the debarment period must equal the length of the confinement sentence including the period of mandatory parole if imposed or the length of the probation sentence.

(b) The procurement official or his or her designee, after consultation with the using agency and the attorney general, shall have authority to suspend a person from consideration for award of contracts if there is probable cause to believe that such person has engaged in activities that may lead to debarment. The suspension shall not be for a period exceeding three months. However, if a criminal charge has been issued for an offense that would be a cause for debarment under subsection (2) of this section, the suspension shall, at the request of the attorney general, remain in effect until after the trial of the suspended person. If a person is suspended because a criminal charge has been issued against an officer, director, partner, manager, key employee, or other principal of the suspended person, the suspension may remain in effect until after the trial of the officer, director, partner, manager, key employee, or other principal or until after the charges against such officer, director, partner, manager, key employee, or other principal have been dismissed.

(c) The authority to debar or suspend shall be exercised pursuant to rules which shall provide for an expeditious resolution of the issue of debarment or suspension.

(2) A person may be debarred for any of the following reasons:

(a) Conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;

(b) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property;

(c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(d) Willful material failure to perform in accordance with the terms of one or more contracts, following notice of such failure, or a history of material failure to perform, or of materially unsatisfactory performance of, one or more contracts;

(e) The person is currently under debarment by any other governmental entity which is based upon a settlement agreement or a final administrative or judicial determination issued by a federal, state, or local governmental entity; or

(f) The department of labor and employment has imposed three fines on a contractor within five years pursuant to section 8-17-104, C.R.S., for failure to satisfy Colorado labor requirements.
R-24-109-105-01 Suspension

(a) After consultation with the affected using agency, the attorney general, and where practicable, the contractor or potential contractor who is to be suspended, the procurement official may issue a written determination to suspend a person from consideration of contracts pending an investigation to determine whether cause exists for debarment. A notice of suspension, including a copy of the determination, shall be sent to the suspended contractor or prospective contractor. Such notice shall:

(i) state that the suspension will be for the period necessary to complete an investigation into possible debarment, as limited in section 24-109-105, C.R.S.;

(ii) inform the suspended contractor or prospective contractor that bids or proposals will not be solicited from the contractor or prospective contractor and, if received, will not be considered during the period of suspension; and

(iii) inform the contractor or prospective contractor of his or her right to appeal administratively or judicially in accordance with article 109 of the code.

(b) A contractor or prospective contractor shall be suspended upon issuance of the notice of suspension. The suspension shall remain in effect during any appeals.

(c) For purposes of this section, the conduct of an individual may impact the suspension of a contractor or prospective contractor based on factors such as the individual’s position with the contractor or prospective contractor to include but not limited to an officer, director, partner, manager, key employee, or other principal of the contractor or prospective contractor.

R-24-109-105-02 Debarment

(a) Following completion of the investigation to determine whether a contractor or prospective contractor has engaged in activities which are a cause for debarment, and after consultation with the affected using agencies and attorney general, the procurement official may debar a contractor or prospective contractor for their department only. A written notice of debarment shall be sent to the debarred person by certified mail, return receipt requested. The notice shall inform the debarred person of his, her or its right to appeal the decision administratively or judicially in accordance with article 109 of the code.

(b) A debarment decision will take effect 20 business days after the date the written notice of debarment is sent by certified mail unless an appeal of the debarment is filed during that time. After the debarment decision takes effect, the person shall remain debarred for the debarment period specified in the decision, unless a court, the executive director, or the procurement official who issued the debarment decision orders otherwise.

(c) If an appeal is filed by the debarred person prior to the effective date of the debarment, the suspension shall remain in effect until the appeal has been resolved. In the event the appeal is denied, the debarment shall be effective on the completion of the initial 20 business day period or upon resolution of the appeal, whichever is later.

(d) For purposes of this section, the conduct of an individual may impact the debarment of a contractor or prospective contractor based on factors such as the individual’s position with the contractor or prospective contractor to include but not limited to an officer, director, partner, manager, key employee, or other principal of the contractor or prospective contractor.
R-24-109-105-03 Statewide Debarment
Following a debarment decision under rule R-24-109-105-02, the procurement official may recommend statewide debarment to the chief procurement officer. The chief procurement officer or his or her designee shall investigate, including consultation with the affected using agencies and attorney general, to determine whether a contractor or prospective contractor has engaged in activities which are a cause for statewide debarment. After the debarment decision takes effect, the person shall remain debarred for the debarment period specified in the decision, unless a court, the executive director, or the chief procurement officer orders otherwise.

R-24-109-105-04 Lists of Suspended and Debarred Persons
(a) The chief procurement officer shall maintain a current list of all debarred and suspended persons and shall share such lists and updates to the procurement officials. The list shall indicate whether the suspension or debarment is specific to a purchasing agency or statewide.
(b) The procurement official or his or her designee shall consider the suspended and debarred list when determining responsibility of prospective contractors for consideration of contracts.
(c) In the event a contractor on the debarred and suspended list has an existing contract with another purchasing agency, the procurement official of the other purchasing agency or his or her designee shall follow the terms of the contract regarding suspension or termination of said contract if deemed in the best interest of the state.

(1) This section applies to controversies between the state and a contractor which arise under, or by virtue of, a contract between them, including, without limitation, controversies which are based upon breach of contract, mistake, misrepresentation, or any other cause for contract modification or rescission.
(1.5) When a controversy cannot be resolved by mutual agreement, the aggrieved party may submit the controversy to the procurement official. The procurement official or his or her designee shall, within twenty business days after receiving a written request by the aggrieved party for a final decision, issue a written decision.
(2) The procurement official or his or her designee is authorized to settle and resolve any controversy described in subsection (1) of this section. This authority shall be exercised pursuant to rules promulgated by the executive director which shall provide for an expeditious resolution of the controversy.
### R-24-109-106-01 Resolution of Controversies

The code establishes procedures and remedies to resolve contract and breach of contract controversies between the state and a contractor. It is the state's intent to try to resolve all controversies by mutual agreement through informal discussions without litigation. As used in these rules, the word "controversy" is meant to be broad and all-encompassing, including the full spectrum of disagreements from pricing of routine contract changes to claims of breach of contract.

### R-24-109-106-02 Filing of Controversy

(a) A contractor may file a controversy with the procurement official concerning breach of contract, mistake, misrepresentation, or any other cause for contract modification or rescission.

(b) The written request for a decision related to a controversy shall include, at a minimum, the following:
   (i) name and address of the contractor;
   (ii) appropriate identification of the contract;
   (iii) a description of the controversy; and
   (iv) any available exhibits, evidence, or documents substantiating the controversy.

(c) The controversy shall be submitted to the procurement official or his or her designee in accordance with the terms of the contract or if not specified in the contract, by mail, hand delivery, electronic submission or other means as approved by the state.

### R-24-109-106-03 Decision

(a) Before issuing a final decision, the procurement official or his or her designee shall review the facts pertinent to the controversy and secure any necessary assistance from legal, fiscal, and other advisers.

(b) The procurement official or his or her designee shall furnish a copy of the decision to the contractor within the time specified in section 24-109-106(1.5), C.R.S., by certified mail, return receipt requested. The decision shall include:
   (i) a description of the controversy;
   (ii) a reference to the pertinent contract provision;
   (iii) a statement of the factual areas of agreement and disagreement;
   (iv) the supporting rationale for the decision; and
   (v) notice of the contractor's right to appeal the decision administratively or judicially in accordance with the provisions of article 109 of the code.

(c) The amount and interest on the amount determined payable pursuant to the decision, less any portion already paid, should be paid without awaiting contractor action concerning appeal. Such payment shall be without prejudice to the rights of either party. If, on appeal, such payments are required to be returned, interest shall be paid by the contractor from the date of payment.

### 24-109-107. Issuance and appeal of decision.

(1) The procurement official or his or her designee shall promptly issue a written decision within the periods specified in this article 109 regarding any protest, debarment or suspension, or contract controversy if it is not settled by mutual agreement. The decision shall state the reasons for the action taken and give notice.
to the aggrieved party of his or her right to administrative review of any material issue and judicial review as provided for in this article 109.

(2) A decision shall be effective unless reversed on appeal. A copy of the decision rendered under subsection (1) of this section shall be mailed or otherwise furnished immediately to the aggrieved party. The decision shall be final and conclusive unless the aggrieved party appeals the decision to the executive director or commences an action in court pursuant to this article 109. Except for appeals referred to the office of administrative courts pursuant to section 24-109-201, an appeal from a decision under this section shall not be subject to the provisions of section 24-4-105.

(3) If the procurement official or his or her designee does not issue a written decision regarding a contract controversy within twenty business days after written request for a final decision, or within such longer period as may be agreed upon by the procurement official or his or her designee and the contractor, then the contractor may proceed as if a decision against him or her had been rendered.


For the purposes of this article 109, in computing time for a period of days, the first business day is excluded and the last business day is included.
**R-24-109-108 Timeliness of Submissions**

For purposes of the rules under article 109 of the code, submissions from an aggrieved party must be received by the executive director, chief procurement officer, or procurement official, or a designee of any such officer, by the deadlines established in article 109 of the code and the associated rules, unless otherwise agreed upon in writing by the parties. Submissions received after the deadlines specified in article 109 of the code and associated rules or as agreed upon, shall be rejected as late. The following exceptions may be considered when determining the timeliness of a submission:

(a) If an aggrieved party’s submission is not delivered by the deadlines established in article 109 of the code, the submission may be accepted if it can be reasonably determined by the executive director, chief procurement officer, or procurement official, or a designee of any such officer, that:

   (i) the postal service, a courier or delivery service outside of the control of the vendor, was in possession of the submission at the specified deadline; and

   (ii) the submission was originally scheduled for delivery by the postal service, a courier or delivery service outside of the control of the vendor to the purchasing agency by the specified deadline; and

   (iii) the submission is received by the purchasing agency on the business day following the specified submission date.

(b) A submission that is in the possession of the state’s internal distribution system at the specified submission time shall be deemed to be received by the purchasing agency by the specified submission deadline.

(c) In the event of a labor unrest (strike, work slowdown, etc.) which may affect mail delivery, the executive director or chief procurement officer is authorized to develop and issue emergency procedures.

(d) In those situations where the late submission was not in the control of the aggrieved party at the time of the submission deadline, the procurement official shall not accept the late submission unless he or she further finds that extenuating circumstances justifying acceptance of the late submission exist and can be documented.

(e) The responsibility for ensuring that the submission is received on time rests with the aggrieved party, and the reasonably foreseeable problems inherent in the delivery of submissions (e.g. slow messengers, slow mail service, weather, bad directions, mechanical failures, traffic, etc.) are not extraordinary circumstances permitting acceptance of late submissions.

**PART 2. APPEALS**

**24-109-201. Appeal to the executive director - stay of procurements.**

(1) Unless an action has been initiated previously in the district court of the city and county of Denver pursuant to this article 109, the executive director shall have the authority to review and determine any appeal by an aggrieved party from a decision of the procurement official or his or her designee rendered pursuant to section 24-109-107. The executive director is authorized to designate another person to exercise his or her powers pursuant to this part 2. The executive director or his or her designee may refer an appeal to the office of administrative courts to review and determine any appeal pursuant to section 24-30-1001. If the aggrieved party files an action with the district court of the city and county of Denver pursuant to section 24-109-205 at any time during the review by the executive director or his or her
designee, the authority of the executive director or the executive director's designee is terminated.

(2) A contract for a total value of one million five hundred thousand dollars or more resulting from a request for proposals is not awarded until any appeal made in connection with the request for proposals has been resolved pursuant to this part 2; except that the executive director or the executive director’s designee may override the stay if he or she determines that such override is in the best interest of the state.

R-24-109-201 Appeal to the Executive Director – Stay of Procurements
At any time an aggrieved party files an appeal to district court in accordance with section 24-109-205, C.R.S., the stay in subsection (2) of section 24-109-201, C.R.S. shall terminate.


(1) The executive director shall adopt rules of procedure which, to the fullest extent possible, provide for the expeditious resolution of appeals of controversies. The only parties to the appeals shall be the aggrieved parties and the appropriate governmental body. Section 24-4-105 shall not apply to reviews and determinations made by the executive director or his or her designee pursuant to this article 109.

(2) An appeal is limited to only the material issues raised in the original protest; except that the appeal may include new evidence or additional information related to those material issues or material issues related to the conduct of the protest.
**R-24-109-202-01 Filing of Appeals**

(a) An aggrieved party may file a written appeal of any decision. Appeals of decisions of the procurement official shall be submitted in writing to the executive director within ten (10) business days of the date a decision is mailed or within twenty (20) business days of a decision regarding a suspension, debarment or contract controversy, in accordance with section 24-109-203, C.R.S. Appeals received after the prescribed time periods shall not be considered.

(b) The written appeal shall include, at a minimum, the following:

(i) name and address of the aggrieved party;

(ii) appropriate identification of the procurement by solicitation or award number;

(iii) a statement of the material issue(s) or controversy giving rise to the appeal;

(iv) copies of all documents and evidence previously submitted to the procurement official or his or her designee;

(v) the decision rendered by the procurement official or his or her designee or, in the absence of a timely decision under subsection 3 of section 24-109-102, C.R.S., a statement of this fact; and

(vi) any additional relevant information.

(c) The written appeal shall be limited to the material issues raised in the original protest.

(d) A written appeal shall be submitted to the executive director or his or her designee in a manner such as mail, hand delivery, or electronic submission such as email. The means of delivery must be commonly used to reasonably allow for receipt by the executive director or his or designee.

(e) A written appeal must be received by the executive director or his or her designee by the deadline computed in accordance with rule R-24-109-108.

**R-24-109-202-02 Additional Information**

The executive director or his or her designee may request that the parties submit any additional information necessary to make a decision on the appeal. If any party fails to submit requested information within the time period set by the executive director or his or her designee, the appeal may be considered without such information.
R-24-109-202-03 Hearing by the Executive Director

(a) An aggrieved party bringing an appeal may request in writing that the executive director or his or her designee conduct a hearing on the appeal.

(b) If a hearing is requested, the executive director or his or her designee shall send a written notice of the time and place of the hearing to all parties and the attorney general. Such notice shall be sent by certified mail, return receipt requested.

(c) Hearings shall be as informal as possible under the circumstances. The weight to be attached to any evidence presented shall be within the discretion of the executive director or his or her designee. Stipulations of fact agreed upon by the parties may be used as evidence at the hearing. The executive director or his or her designee may request evidence in addition to that presented by the parties. A hearing may be recorded but need not be transcribed except at the request and expense of the aggrieved party. A record of those present, identification of any written evidence presented, copies of all written statements, and a summary of the hearing shall be sufficient record. The executive director or his or her designee may:

(i) hold informal conferences with one or both of the parties to settle, simplify, or fix the issue or to consider other matters that may aid in an expeditious disposition of the appeal;

(ii) require parties to state their position with respect to the various issues;

(iii) require parties to produce for examination those relevant witnesses and documents under their control;

(iv) regulate the course of the hearing and conduct of participants;

(v) receive, rule on, exclude, or limit evidence and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious; and

(vi) request and set time limitation for submission of briefs.

24-109-203. Time limitation for appeals.

(1) In the case of an appeal to the executive director from a decision regarding a protested solicitation or award, the aggrieved party shall file an appeal within ten business days of the date that a decision is mailed or otherwise furnished to the aggrieved party pursuant to section 24-109-107 (2).

(2) In the case of an appeal to the executive director from a decision regarding a debarment, suspension, or contract controversy, the aggrieved party shall file an appeal within twenty business days of a decision rendered or deemed to be rendered pursuant to section 24-109-107.


(1) On each appeal submitted, the executive director or his or her designee shall promptly decide the contract controversy, debarment, or suspension or whether the solicitation or award was in accordance with the procedures provided in this code, regulations enacted pursuant to this code, and the terms and conditions of the solicitation. The decision shall be in writing. A copy of any decision shall be provided to the aggrieved party and the procurement official of the using agency.

(2) In the case of any protest concerning the solicitation or award of a contract or of debarment or suspension from consideration for award of contract or contract controversy, a written decision shall be issued within thirty business days after receipt of the appeal.
(3) If the executive director or his or her designee determines that the solicitation or award was not in accordance with this code, remedies awarded in the decision, if any, shall be limited to those set forth in part 5 of this article 109.

R-24-109-204 Decision of the Executive Director
(a) The executive director or his or her designee shall issue a final decision on the issue. Copies of the decision shall inform the aggrieved party of his or her rights to judicial appeal in accordance with article 109 of the code. However, if an action concerning the protest, suspension, debarment, or contract controversy has been commenced in court, the executive director or his or her designee shall not act on the matter but shall refer it to the attorney general.
(b) If the executive director or his or her designee refers an appeal to the office of administrative courts in accordance with section 24-109-201(1), C.R.S., the timeline for a written decision may be adjusted based on section 24-4-105, C.R.S.

24-109-205. Appeals to district court.
An appeal of a decision of the executive director or his or her designee rendered pursuant to section 24-109-201 or by the procurement official or his or her designee rendered pursuant to section 24-109-107 shall be filed with the district court for the city and county of Denver, which shall have exclusive jurisdiction to hear such appeals. The provisions of section 24-4-106 shall not apply to any appeal to the district court under this part 2.

R-24-109-205 Appeals to District Court
If at any time an aggrieved party files an appeal to district court, the stay of the award imposed by subsection (2) of section 24-109-201, C.R.S., shall terminate.

24-109-206. Time limitations on appeals to the district court.
(1) A judicial review of a decision of the executive director or his or her designee or of the procurement official or his or her designee shall be initiated within the following time periods:
   (a) In the case of an action between the state and an aggrieved party aggrieved in connection with the solicitation or award of a contract, within ten business days after the decision is rendered;
   (b) In the case of a suspension or debarment, within six months after the decision is rendered; or
   (c) In the case of an action on a contract or for breach of a contract, within twenty business days after the date the decision is rendered.

PART 3. INTEREST

24-109-301. Interest.
Except for interest payable on liability incurred by the state under section 24-30-202 (24), interest on amounts determined to be due to a contractor or to the state under this code shall accrue from the date the controversy was submitted pursuant to section 24-109-106 through the final resolution of the controversy by the procurement official or upon final determination of the executive director or adjudication of the Denver district court, whichever occurs last. Interest shall be calculated at the amount due at the rate set forth in the contract or at the rate of one percent per month, whichever is greater, until the amount is paid in full.
PART 4. SOLICITATIONS AND AWARDS IN VIOLATION OF THE LAW

24-109-401. Applicability. (Repealed)

24-109-402. Remedies prior to an award. (Repealed)

24-109-403. Remedies after an award. (Repealed)

If any governmental body purchases any supplies, services, or construction contrary to the provisions of this code or the rules promulgated pursuant thereto, the head of such governmental body and the public employee, which for the purposes of this section includes elected officials, actually making such purchase shall be personally liable for the costs of such supplies, services, or construction. If such supplies, services, or construction are unlawfully purchased and paid for with state moneys, the amount thereof may be recovered in the name of the state in an appropriate civil action.

R-24-109-404-01 Definitions
(a) An “unauthorized purchase” is when a purchase has occurred or a purchase commitment has been issued to a vendor to obtain goods, services, or construction and:

(i) the using agency has not followed the code and rules; or

(ii) a purchase or commitment to purchase is made by a person(s) who is not so authorized.

(b) “Ratification” is the approval of an unauthorized purchase by the executive director, chief procurement officer or using agency’s procurement official, to the extent authorized under rule R-24-109-404-02, following a review and consideration of all to the facts surrounding the unauthorized purchase.

(c) “Responsible individual(s)” is the person(s) who has made an unauthorized purchase.

R-24-109-404-02 Authority of the Executive Director, Chief Procurement Officer and Procurement Official
(a) The executive director or chief procurement officer, or designee of either officer, after review and consideration of all facts involved in an unauthorized purchase, may ratify the unauthorized purchase in accordance with rules R-24-109-404-04 and -05.

(b) A procurement official, after review and consideration of all facts involved in an unauthorized purchase, may ratify an unauthorized purchase in accordance with rules R-24-109-404-04 and R-24-109-404-05, unless:

(i) ratification requires the approval of the executive director or chief procurement officer in accordance with section 24-109-503, C.R.S.;

(ii) ratification requires the approval of the executive director or chief procurement officer in accordance with section 24-109-504, C.R.S.; and

(iii) the original procurement giving rise to the unauthorized purchase required approval of the executive director or chief procurement officer or a designee of either officer.
R-24-109-404-03 Factors to Be Considered in Ratification of an Unauthorized Purchase.

(a) The procurement official shall consider all factors related to the procurement including, but not limited to, the following in determining whether to ratify an unauthorized purchase:

(i) the facts and circumstances giving rise to the need for the good or service, including the responsible individual's explanation as to why established procedures were not followed, and any lack of information or training on the part of the responsible individual;

(ii) indications of intent to deliberately evade established purchasing procedures;

(iii) whether the purchase, if it had been made according to established procedures, would have been reasonable (prudent) and appropriate;

(iv) the extent to which any competition was obtained;

(v) whether this is the first violation or a repeat violation by the responsible individual;

(vi) whether appropriate written assurances and safeguards have been established by the purchasing agency to preclude a subsequent unauthorized procurement; and

(vii) indications as to whether either the purchasing agency or vendor has acted fraudulently or in bad faith.

(b) The procurement official shall consider the above factors as they apply to the purposes of section 24-101-102, C.R.S., and fairness to any vendor who has acted fairly and in good faith.

R-24-109-404-04 Purchasing Agency Actions - Ratification of Individual’s Action

In addition to the action required in rule R-24-109-404-05, after consideration of the factors in rule R-24-109-404-03, the procurement official may take one of the following actions.

(a) If the procurement official determines that the responsible individual operated in good faith, the procurement official may ratify the actions of the responsible individual; or

(b) If the procurement official determines that the responsible individual operated in bad faith, the procurement official shall not ratify the actions of the responsible individual.
### R-24-109-404-05 Purchasing Agency Actions - Ratification of Contract

In addition to the action required in rule R-24-109-404-04, and after consideration of the factors in rule R-24-109-404-03, the procurement official may take one of the following actions.

(a) The procurement official may ratify the contract and authorize payment if the procurement official determines:
   - (i) contractor acted in good faith;
   - (ii) procurement meets substantive requirements of the code; and
   - (iii) violation is only procedural.

(b) The procurement official may ratify the contract and authorize payment if the procurement official determines:
   - (i) contractor acted in good faith;
   - (ii) procurement does not meet substantive requirements of the code; and
   - (iii) ratification is in best interest of state.

(c) The procurement official shall not ratify the contract, but may authorize payment in an amount equal to lesser of amount agreed to in unauthorized purchase or contractor’s actual, documented expenses and reasonable profit as determined by the procurement official, when the conditions are:
   - (i) contractor acted in good faith;
   - (ii) procurement does not meet substantive requirement of the code; and
   - (iii) ratification is not in best interest of state.

(d) The procurement official shall not ratify the contract or authorize payment if the procurement official determines that the contractor acted in bad faith.

### R-24-109-404-06 Purchasing Agency Actions - In the Event of Denial

(a) In the event the procurement official refuses to ratify the unauthorized procurement, he or she shall notify:
   - (i) the responsible individual, the state controller and the controller for the purchasing agency, that ratification is denied, and that the responsible individual(s) may be held personally liable for payment;
   - (ii) the affected vendor(s) that the state has denied responsibility for the purchase, in whole or in part, as determined in the ratification review process; and
   - (iii) the chief procurement officer, if the determination is made by a procurement official.

(b) In the event a court action is filed involving a procurement that is undergoing a ratification review, the ratification process shall cease and the matter shall be referred to the attorney general.

### R-24-109-404-07 Written Determination

A written determination setting forth the basis for the decision shall be made and included in the procurement record.

## PART 5. REMEDIES

The remedies set forth in this part 5 shall be the exclusive remedies available to an aggrieved party upon a judicial or administrative determination that a solicitation or award of a contract was in violation of this code. For the purposes of this part 5, a violation of the code shall not include administrative or clerical defects that are not material to the solicitation or award of a contract or that can be corrected by the governmental body. Any relief not expressly provided for in this part 5 is prohibited.

24-109-502. Protests - remedies prior to an award.

If, prior to the awarding of a contract, the procurement official determines that a solicitation or the proposed award is in violation of this code, the solicitation or proposed award shall be canceled or revised to comply with this code, at the direction of the procurement official. The determination of the procurement official under this section shall not be subject to further administrative or judicial review.

24-109-503. Protest - remedies following an award - ratification by chief procurement officer.

If the procurement official determines that the solicitation or award is in violation of this code, the procurement official may cancel or terminate such solicitation or award, direct the governmental body to modify such solicitation or award to eliminate the violations, or if the procurement official determines that the solicitation or award is in the best interests of the state, the procurement official may submit the recommendation to ratify the solicitation or award to the executive director or the chief procurement officer or a designee of either officer. If the executive director or chief procurement officer or a designee of either officer elects to ratify the solicitation or award, the aggrieved party who should have been awarded the contract under the solicitation, but was not, shall be entitled to costs as set forth in section 24-109-505. The acceptance of costs by the aggrieved party constitutes a waiver of the right to appeal the determination of the executive director or the chief procurement officer or a designee of either officer.

24-109-504. Appeals - remedies following an award.

(1) If the executive director or his or her designee determines that the solicitation or award is in violation of this code in any material respect, the executive director or his or her designee may cancel or terminate such solicitation or award, direct the purchasing agency to modify such solicitation or award to eliminate any violations, or if the procurement official determines that the solicitation or award is in the best interests of the state, the procurement official may submit the recommendation to ratify the solicitation or award to the executive director or his or her designee. If the executive director or his or her designee elects to ratify the solicitation or award, the aggrieved party who should have been awarded the contract under the solicitation, but was not, shall be entitled to costs as set forth in section 24-109-505.

(2) If, upon judicial review under section 24-109-205, it is determined that a solicitation or proposed award is in violation of this code, the court shall direct the executive director to determine whether the best interests of the state require ratification, termination, or cancellation of the solicitation, award, or contract. The executive director or his or her designee shall issue its determination in writing, within ten business days of the court's direction, and direct the purchasing agency to comply with the determination. The determination of the executive director or his or her designee under the direction of the district court shall not be subject to further administrative or judicial appeal or review.

(3) If the executive director or his or her designee ratifies a solicitation or award in violation of this code, the aggrieved party who should have been, but was not,
awarded the contract under the solicitation shall be entitled to costs as set forth in section 24-109-505.


When a protest is sustained by the procurement official or upon administrative or judicial review and the aggrieved party should have been, but was not, awarded the contract under the solicitation, the aggrieved party shall be entitled to only the reasonable costs incurred in connection with the solicitation, including bid preparation costs. Reasonable costs shall not include attorney fees. No other costs shall be permitted. These costs shall be paid from funds appropriated or otherwise made available to the using agency that is determined to be responsible for the violation of the code. Such determination shall be made by the procurement official in connection with a protest and by the executive director in connection with an appeal.
ARTICLE 110. INTERGOVERNMENTAL RELATIONS

PART 1. DEFINITIONS

24-110-101. Definitions. (Repealed)

PART 2. COOPERATIVE PURCHASING

24-110-201. Cooperative purchasing authorized.

(1) In accordance with the provisions of this article 110 and rules promulgated by the executive director, any public procurement unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one or more public procurement units, external procurement units, or procurement consortiums that include as members tax-exempt organizations as defined by section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multiparty contracts between public procurement units and open-ended state public procurement unit contracts that are made available to local public procurement units.

(1.5) With prior written approval of the chief procurement officer and under procedures established by rule, a state public procurement unit may sponsor, conduct, or administer a cooperative purchasing agreement with one or more public procurement units, external procurement units, or procurement consortiums.

(2) With prior written approval of the chief procurement officer and under procedures established by rule, a state public procurement unit may purchase goods or services under the terms of a contract between a vendor and an external procurement unit or a local public procurement unit without complying with the requirements of section 24-102-202.5 and article 103 of this title 24.

(3) With written approval from the procurement official and under procedures established by rule, a state public procurement unit may purchase goods or services under the terms of another state public procurement unit without complying with the requirements specified in section 24-102-202.5 and article 103 of this title 24.

(4) Unless otherwise approved by the chief procurement officer, the procurement official shall comply with the following order of priority for the use of cooperative purchasing agreements:

(a) First, state-issued cooperative purchasing agreements;
(b) Second, state public procurement unit cooperative purchasing agreements; and
(c) Third, public procurement unit or external public procurement unit cooperative purchasing agreements.

(5) A local public procurement unit may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services as permitted by the procurement code, ordinances, and rules of such local public procurement unit.
R-24-110-201 Cooperative Purchasing
The chief procurement officer or his or her designee may approve the purchase of goods or services in accordance with section 24-110-201(2), C.R.S., if such purchase is in the best interests of the state, after considering: (1) the interests of Colorado vendors; (2) the competitiveness of pricing under the cooperative procurement; (3) the ability to effectively meet the state’s business needs; (4) the efficiencies and cost savings of using the cooperative procurement, beyond the savings and administrative convenience achieved from not having to comply with article 103 of the code; and (5) the purposes of the code, as set forth in section 24-101-102, C.R.S.
(a) The procurement official shall make the request through the chief procurement officer or his or her designee addressing the considerations set forth above.
(b) The chief procurement officer or his or her designee may approve a single purchase, make a conditional approval, or approve participation in an on-going program with the external procurement activity or the local public procurement unit. Participation in a cooperative purchasing agreement is limited to the term approved by the chief procurement officer or his or her designee or the term of the agreement, whichever is shorter.

24-110-202. Sale, acquisition, or use of supplies by a public procurement unit.
Any public procurement unit may sell to, acquire from, or use any supplies belonging to another public procurement unit or external procurement unit independent of the requirements of article 103 of this title 24.

24-110-203. Cooperative use of supplies or services.
Any public procurement unit may enter into an agreement, independent of the requirements of article 103 of this title 24, with any other public procurement unit or external procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

24-110-204. Joint use of facilities.
Any public procurement unit may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit or an external procurement unit under the terms agreed upon between the parties.

24-110-205. Supply of personnel, information, and technical services.
(1) Any public procurement unit is authorized, in its discretion, upon written request from another public procurement unit or external procurement unit, to provide personnel to the requesting public procurement unit or external procurement unit.
(2) Informational, technical, and other services of any public procurement unit may be made available to any other public procurement unit or external procurement unit if the requirements of the public procurement unit tendering the services shall have precedence over the requesting public procurement unit or external procurement unit. The requesting public procurement unit or external procurement unit shall pay any expenses incurred in providing such services, in accordance with the agreement between the parties.
(3) Upon request, the executive director through the division of local government, within the department of local affairs, may make available to local public procurement units and external procurement units the following items, including, but not limited to:
(a) Standard forms;
(b) Printed manuals;
(c) Product specifications and standards;
(d) Quality assurance testing services and methods;
(e) Lists of qualified products;
(f) Source information;
(g) Lists of common use commodities;
(h) Supplier prequalification information;
(i) Supplier performance rating;
(j) Lists of debarred and suspended bidders;
(k) Forms for invitations for bids, requests for proposals, instructions to bidders, general contract provisions, and other contract forms; and
(l) Contracts or published summaries of contracts, including price and time of delivery information.

(4) The state, through the division of local government within the department of local affairs, may provide to local public procurement units and external procurement units technical services, including, but not limited to, the following:
(a) The development of products specifications;
(b) The development of quality assurance test methods including receiving, inspection, and acceptance procedures;
(c) The use of product testing and inspection facilities; and
(d) The use of personnel training programs.

24-110-206. Use of payments received by a supplying public procurement unit.
All payments from any public procurement unit or external procurement unit that are received by a public procurement unit for supplying personnel or services shall be available for use as authorized by law or pursuant to fiscal rules.

24-110-207. Public procurement units - compliance with code.
Whenever the public procurement unit or external procurement unit that is administering a cooperative purchasing agreement complies with the requirements of this code, the public procurement unit that is participating in such agreement shall also be deemed to have complied with this code. No public procurement unit may enter into a cooperative purchasing agreement for the purpose of circumventing this code.

24-110-207.5. Certification of certain entities as local public procurement units - rules - report.
(1) The executive director may certify any of the following entities as a local public procurement unit:
(a) Any nonprofit community mental health center, as defined in section 27-66-101, C.R.S., any nonprofit community mental health clinic, as defined in section 27-66-101, C.R.S., any nonprofit community-centered board, as defined in section 25.5-10-202, C.R.S., or any nonprofit service agency, as defined in section 25.5-10-202, C.R.S., if the entity uses the supplies, services, or construction procured for the public mental health system or the public developmental disability system;
(b) Any nonprofit entity eligible to receive funds pursuant to section 24-32-705 or 24-32-717, if the entity uses the supplies, services, or construction procured for the rehabilitation, construction, acquisition, or provision of low- or moderate-income housing; or

(c) Any public benefit nonprofit entity, if the entity uses the supplies, services, or construction procured in the furtherance of its stated nonprofit purpose.

(2) The executive director may adopt such rules as are necessary to implement the certification process required by this section.

(3) Repealed.

**R-24-110-207.5 Definition**

"Public benefit nonprofit entity" means an organization that:

(a) Is exempt from federal taxation under 26 U.S.C. section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended;

(b) Does not possess 501 (c) (4) status under the federal "Internal Revenue Code of 1986", as amended, 26 U.S.C. section 501 (c) (4); and

(c) Receives funds from federal, state, or local governmental sources.

24-110-208. Review of procurement requirements.

To the extent possible, the executive director may collect information concerning the type, cost, quality, and quantity of commonly used supplies, services, or construction being procured or used by state public procurement units. The executive director, through the division of local government within the department of local affairs, may also collect such information from local public procurement units. The executive director may make available all such information to any public procurement unit upon request.

**PART 3. CONTRACT CONTROVERSIES**

24-110-301. Contract controversies.

In the case of a cooperative purchasing agreement, controversies which arise between an administering public procurement unit and its bidders, offerors, or contractors may be resolved in accordance with article 109 of this title.
ARTICLE 111. PREFERENCES IN AWARDING CONTRACTS - FEDERAL ASSISTANCE REQUIREMENTS

Notwithstanding the requirements of section 24-103-201, state procurement contracts, where appropriate, shall be awarded as provided in sections 17-24-111, 24-30-1203, and 26-8.2-103, C.R.S.

(1) When two or more socioeconomic procurement programs are applicable to the same procurement, businesses benefitting from such programs shall be considered in the following order of precedence:
   (a) Correctional industries;
   (b) Industries for the visually impaired;
   (c) Industries for persons with severe disabilities.

24-111-103. Compliance with federal requirements. (Repealed)
ARTICLE 112. EFFECTIVE DATE - APPLICABILITY


(1) This code shall take effect on January 1, 1982. The provisions of this code apply to contracts solicited or entered into on or after said date, although the parties to a contract may agree to the application of this code to a contract solicited or entered into prior to January 1, 1982.

(2) Contracts validly entered into prior to January 1, 1982, and the rights, duties, and interests flowing from them remain valid on or after said date and may be terminated, performed, or enforced as required or permitted by any statute or other law amended or repealed by the enactment of this code as though such repeal or amendment had not occurred unless the parties agreed at the time of formation of such contract that the provisions of this code would apply.

R-24-112-101-01 Effective Date - Applicability

Rules implementing the Colorado Procurement Code, as amended by HB17-1051, shall become effective October 1, 2018. All contracts solicited or entered into after October 1, 2018, shall be in accordance with the Code and these rules.